APPENDIX

IN THE

Supreme Court of the United States

October Term, 1967

No 673

GEORGE CAMPBELL PAINTING CORP.,

Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, Members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Appellees.

GEORGE CAMPBELL PAINTING CORP.,

Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, Members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Appellees.

On Appeal from the Court of Appeals of the State of New York

Filed October 2, 1967

Probable Jurisdiction Noted January 29, 1968

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RECORD OF REVIEW FROM ADMINISTRATIVE DETERMINATION

Notice of Petition

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 6987/1965

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition of George Campbell Painting Corp., verified on the 2nd day of October, 1965, upon all the proceedings heretofore had herein, an application will be made to a Special Term, Part I of this Court, to be held at the New York County Court House, 60 Centre Street, Borough of Manhattan, City and State of New York, on October 25, 1965, at 9:30 A.M., or as soon thereafter as counsel can be heard, for a judgment granting the relief prayed for in the petition, and for such other and further relief this Court may deem just and proper.

TAKE FURTHER NOTICE that petitioner demands that you produce the following papers at the hearing specified above:

1. The letter by District Attorney Frank S. Hogan to William Reid, advising the New York City Housing Authority of the alleged refusal of George Campbell, Jr. to waive immunity;

2. Copies of the decisions, orders, or notices in which the New York City Housing Authority allegedly barred the petitioner from bidding on future contracts; and

3. A copy of the transcript of the deposition of Theodoré Ruzow taken pursuant to Section 157(3) of the Public Housing Law on August 5, 1965, and subscribed to on August 15, 1965.

Dated: New York, New York
October 4, 1965.

Yours, etc.

RUZOW & LIPNER
Attorneys for Petitioner

ALBERT A. BLINDER
Of Counsel

To:

William Reid
Francis I. Madigan
Ira S. Robbins
New York City Housing
Authority

Petition

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

To the Supreme Court of the State of New York:

Petitioner, George Campbell Painting Corp., by its attorneys, Ruzow & Lipner, complaining of respondents, respectfully alleges:

1. Petitioner is a corporation duly organized under the laws of the State of New York, with its principal place of business at 40-11 149th Street, Flushing, County of Queens.

2. Petitioner is in the business of general painting contracting and, among other things, has been engaged in painting and decorating contracts for the respondent, New York City Housing Authority.

3. Respondents, William Reid, Francis V. Madigan and Ira S. Robbins, respectively, are chairmen and members of the New York City Housing Authority.

4. Respondent, New York City Housing Authority is the agency which cancelled certain existing contracts of the petitioner and barred it from future bidding for five years.

5. The alleged refusal by an officer and director of petitioner to waive immunity occurred in New York County.

6. Petitioner is a corporation which was organized in 1964 with the Estate of George Campbell, Sr., owning fifty

(50%) percent of the stock therein, and the remaining fifty (50%) percent owned equally by George Campbell, Jr., Marian Campbell Rizzi, Anita Campbell Ponte, Jane Campbell Jesinsky and Barbara Campbell Dougherty.

7. Prior to the incorporation of the George Campbell Painting Corp., as aforesaid, the business was conducted as a partnership entitled "George Campbell & Company." The stockholders of petitioner were members of the partnership with the same ownership interest. At all times during his lifetime George Campbell, Sr., was the general partner in charge of the partnership.

8. Under the partnership the aforesaid George Campbell, Sr. was engaged in performing general painting contracting for the respondent, New York City Housing Authority, and for other governmental agencies and sub-divisions within the State of New York and elsewhere, for a period in excess of thirty (30) years. At no time during that period had any of its contracts been cancelled or had it been barred from future bidding because of provisions of Public Authorities Law §2602, General Municipal Law §103(b), or any other corresponding sections of the State or Federal Statutes.

9. After the demise of George Campbell, Sr. on August 2, 1964, petitioner acquired all of the assets and assumed all of the liabilities of the partnership. George Campbell, Jr. was elected president of petitioner. He was also a director and stockholder.

10. On March 26, 1965, the aforesaid George Campbell, Jr. resigned as an officer and director of the petitioner, and on or about that date he divested himself of his stockholdings. A copy of the minutes of the directors' meeting pertaining to the resignation is annexed hereto, made a part hereof and marked Exhibit A.

11. Since March 26, 1965, George Campbell, Jr. has been employed as an estimator, a position which does not entail any management functions.

12. On April 13, 1965, at the office of Albert A. Blinder, 485 Lexington Avenue, New York City, a detective of the New York County District Attorney's Office served a subpoena upon the aforesaid George Campbell, Jr., calling for his appearance before a Grand Jury on Wednesday, April 14, 1965.

13. On April 14, 1965, George Campbell, Jr. appeared before the Grand Jury and refused to sign a waiver of immunity thereat.

14. Upon information and belief, New York County District Attorney Frank S. Hogan, advised the respondent, New York City Housing Authority, of such refusal in a letter to the respondent Reid.

15. Upon information and belief, as a result of the aforesaid letter, the respondent, New York City Housing Authority, upon the decision made by the respondents Reid, Madigan and Robbins, cancelled the existing contracts of the George Campbell Painting Corp. and barred it from future bidding with respondent, New York City Housing Authority, for five years.

16. Thereafter a letter was sent to the petitioner by the New York City Housing Authority informing it of the Authority's action. A copy of the letter is annexed hereto, made a part hereof and marked Exhibit B.

17. On March 29, 1965, Ernest Ponte, a vice-president of the petitioner, was subpoenaed to appear before the same Grand Jury allegedly investigating painting contracts. On

March 30, 1965, the aforesaid Ernest Ponte appeared at the office of the District Attorney and was interviewed by an assistant district attorney. At that time the assistant district attorney in charge was informed that the aforesaid Ernest Ponte was willing to sign a waiver of immunity. The assistant district attorney informed the aforesaid Ernest Ponte that his appearance was not required on that date, but that at a later time he would be recalled. The aforesaid assistant district attorney was told that Mr. Ponte would cooperate with the Grand Jury and would appear whenever a request was made through counsel.

18. On or about the 20th day of April, 1965, other officers and directors of the petitioner, to wit, Marian Campbell Rizzi, Elizabeth Campbell, George Morvan, Theodore Ruzow and Ernest Ponte, were requested to appear before the Grand Jury. Each of the aforesaid officers and directors voluntarily appeared on the 22nd day of April, 1965, each advised the assistant district attorney that he (or she) would sign a waiver of immunity, did in fact so sign. Later, George Morvan, Theodore Ruzow and Ernest Ponte were asked to appear before the Grand Jury and each answered any and all questions put to him by the aforesaid Grand Jury and its legal representative. (Marion Campbell Rizzi and Elizabeth Campbell were excused without being asked to testify.)

19. No agreements of any kind have been entered into with the aforesaid George Campbell, Jr. about his reinstatement as an officer and director. The petitioner does not now intend to reemploy or otherwise reengage his services as an officer and director.

20. The petitioner, as aforesaid, through its other officers and directors as aforesaid, has cooperated with the District Attorney's investigation. Moreover, its books and

records have been made available to other city agencies in connection with their investigations.

21. The titles of the officers and directors of the petitioner who voluntarily testified and/or signed waivers of immunity are:

George Morvan
Executive Vice-President, Director

Ernest Ponte
Vice-President

Theodore Ruzow
Director

Marion Campbell Rizzi
Secretary, Director

Elizabeth Campbell
Treasurer, Director

22. During the past thirty years, petitioner's predecessor partnership, and since its incorporation, the petitioner, has constituted one of the largest painting contractors in the area. Its reputation for public service contracts has been the highest. Among the major contracts undertaken and satisfactorily completed by the petitioner and its predecessor partnership during the last ten years have been:

United States Military Academy
West Point, New York

Oahe Reservoir
Pierre, South Dakota

General Electric Appliance Park
Louisville, Kentucky

Triboro Bridge
New York

Whitestone Bridge
New York

Henry Hudson Bridge
New York

Walt Whitman Bridge
Philadelphia, Pa.

Mid-Hudson Bridge
New York

Memphis Arkansas Bridge
Memphis, Tenn.

Ravenswood Generating Plant
New York

Astoria Generating Plant
New York

Mahlstrom Airforce Base
Great Falls, Montana

Scott Airforce Base
Illinois

Loring Airforce Base
Caribou, Maine

New York State Court of Appeals
Albany, New York

Creedmoor Hospital
New York

Harlem Valley State Hospital
Pawling, New York

Booth Memorial Hospital
Queens, New York

Veteran's Administration Hospital
New York

United States Court House
Foley Square, New York City, New York

Yeshiva University
New York

Municipal Court, City of New York
New York

Bronx City Prison
New York

Raymond Street Jail
Brooklyn, New York

Grumman Aircraft Company Plant
Brookhaven, New York

23. George Campbell, Jr. is twenty-four years of age. He is a ten (10%) percent residuary legatee under the estate of his late father, George Campbell, Sr. No distribution has as yet been made to any legatees under the aforesaid estate which is being probated in the Surrogate's Court of Queens County, New York.

24. The aforementioned ten (10%) percent undistributed interest in the estate constitutes the only beneficial interest which George Campbell, Jr. now has in petitioner. Upon the final distribution of the assets of the estate, petitioner anticipates that George Campbell, Jr. will receive as his share a monetary payment in lieu of a distribution in kind of the stock in petitioner now owned by the estate.

25. The work done by the petitioner and its predecessor partnership during the last five years for respondent, New York City Housing Authority, has constituted less than fifteen (15%) percent of its total annual volume. At the present time the work for the respondent, as aforesaid, constitutes an even smaller percentage of its gross sales.

26. The action by the respondents, Reid, Madigan and Robbins, and the New York City Housing Authority, purportedly was pursuant to Section 2602 of the Public Authorities Law in that the aforesaid respondents thought that the aforesaid section had been violated by a member, partner, director, or officer of the petitioner refusing to sign a waiver of immunity.

27. Respondents in barring the petitioner from future bidding for five years for the alleged refusal of George Campbell, Jr. to waive immunity before the New York County Grand Jury, violated the rights of your petitioner, and your petitioner respectfully submits that this action by respondents, Reid, Madigan, Robbins and the New York City Housing Authority was an abuse of their discretion and was decided arbitrarily and capriciously, based upon erroneous information and/or interpretation of the aforesaid section of the Public Authorities Law.

28. Such acts by the respondents were arbitrary, capricious and an abuse of discretion in that the aforesaid George Campbell, Jr., was no longer an officer, director, or stockholder of the petitioner at the time he refused to waive immunity before the Grand Jury, and moreover, was not an officer, director, or stockholder at the time a subpoena was served upon him for his appearance as aforesaid.

29. The decision by the respondents, Reid, Madigan, Robbins and the New York City Housing Authority on or

about April 21, 1965, to bar and disqualify as aforesaid, was arrived at without a hearing being held, despite the fact that they were informed by letter dated April 9, 1965, that the aforesaid George Campbell, Jr. was no longer an officer and director of the corporation. Likewise, by letter bearing the same date, the District Attorney of New York County, Frank S. Hogan, was notified that the aforesaid George Campbell, Jr. was no longer an officer, director, or stockholder of said corporation.

30. After notice by the respondents, Reid, Madigan, Robbins and the New York City Housing Authority of the barring and disqualification as aforesaid, a letter dated April 23, 1965 was sent by the petitioner through its counsel to the respondent, requesting an immediate hearing. A copy of the letters dated April 9, 1965 and April 23, 1965 are annexed hereto, made a part hereof and designated as Exhibits C and C-1.

31. When no reply was received concerning the aforesaid Exhibit C, a telegram was sent by one of the counsel for petitioner on April 27, 1965, again requesting a hearing. A copy of the aforesaid telegram is annexed hereto, made a part hereof and marked Exhibit D.

32. On or about May 5, 1965, respondent, New York City Housing Authority, replied to petitioner's requests by letter, to the effect that no useful purpose would be served by holding a hearing. A copy of the aforesaid letter is annexed hereto, made a part hereof and marked Exhibit E.

33. Petitioner submitted a notice of claim to the respondent, New York City Housing Authority, a copy of which is annexed hereto, made a part hereof, and marked Exhibit F. More than thirty days have elapsed since the notice of claim was served and since then the deposition, pursuant to Section 157(3) of the Public Housing Law was

concluded by the respondent New York City Housing Authority.

34. Petitioner holds other contracts with governmental bodies, subdivisions and authorities within the State of New York. The decision by the New York City Housing Authority and its members, as aforesaid, has caused and will continue to cause irreparable damage to petitioner's goodwill and reputation in the community, with a resulting loss of business, and may well jeopardize its continuing relationship with government departments, agencies, authorities or their subdivisions within the State of New York.

35. On or about April 21, 1965, upon the alleged erroneous findings of the respondents, Reid, Madigan, Robbins and the New York City Housing Authority, the aforesaid respondents directed their Director of Public Relations, one Oscar Kanny, to release a "news release" which was disseminated not only among all the news media within this county and state, but was also sent to other public officials at governmental agencies, departments, bureaus and their subdivisions with whom the petitioner has contracts extant. A copy of the news release is annexed hereto, made a part hereof and marked Exhibit G.

36. Upon all the foregoing and the cancellation of the three contracts described in Exhibit C annexed hereto, petitioner is now suffering irreparable and irremedial injury which will continue for the next five years as a result of the arbitrary, capricious and erroneous decision referred to above.

37. For the reasons above stated, and in view of the limited amount of financial interest of the aforesaid George Campbell, Jr. at the time of his refusal to sign a waiver of immunity, the petitioner believes that it will not be in the public interest to countenance the disqualification alleged above.

38. Petitioner, to the knowledge of any of its officers and directors, denies that it has engaged in any practices which were illegal under any state or federal law, or under any city ordinance or regulation.

39. This petition applies only to the disqualification portion of the notice of claim heretofore served.

40. Petitioner has no adequate remedy at law.

41. Petitioner commenced a special proceeding on or about May 5, 1965, in this Court. Upon the return date thereof respondents moved to dismiss for, among other reasons, the failure of petitioner to allege that more than thirty days had elapsed between the time of the filing of the notice of claim and the commencement of the special proceeding. Justice William Lyman sustained the motion on this ground, but granted petitioner leave to renew upon compliance therewith. As set forth above in paragraph 33, petitioner has complied with the thirty-day requirement and makes this petition pursuant to the previous decision of Mr. Justice Lyman.

WHEREFORE, petitioner prays that an order be granted herein pursuant to Article 78 of the Civil Practice Law and Rules annulling the determination by respondents barring and otherwise disqualifying petitioner from future bidding for a period of five (5) years and for such other and further relief as to this Court may seem just and proper.

Ruzow & Lipner
Attorneys for Petitioner

Albert A. Blinder
Of Counsel

(Verified Oct. 2, 1965.)

Exhibit A Annexed to Petition

Copy of Minutes of Directors' Meeting

MINUTES OF A SPECIAL MEETING

OF

BOARD OF DIRECTORS

GEORGE CAMPBELL PAINTING CORP.

A special Meeting of the Board of Directors of GEORGE CAMPBELL PAINTING CORP. was held on the 9th day of April, 1965 at 10:30 AM o'clock in the offices of Ruzow and Lipner, 501 Fifth Avenue, New York City.

The following were present:

George Morvan	Jane Jesinsky
Marian Rizzi	Elizabeth Campbell
Anita Ponte	Theodore M. Ruzow

Theodore M. Ruzow served as Acting Chairman and called the meeting to order.

The Acting Chairman presented the resignation of George Campbell, Jr., as President and Director of GEORGE CAMPBELL PAINTING CORP. dated March 26, 1965, and also surrendered Stock Certificate #6 in the amount of 10 shares transferred to GEORGE CAMPBELL PAINTING CORP. to the Directors of GEORGE CAMPBELL PAINTING CORP. at the meeting.

On motion duly made, seconded and unanimously carried, it was

> RESOLVED, that committee be elected to select a president. The committee to be Elizabeth Campbell, Jane Jesinsky, Anita Ponte, with Marian Rizzi as Secretary to the Committee.

RESOLVED, that the Committee would give their report in thirty (30) days.

There being no further business before the meeting, the same was, on motion, duly adjourned.

Dated: April 9, 1965

Marian Rizzi
Secretary

Letter of Resignation Dated March 26, 1965 Annexed to Exhibit A

March 26, 1965

To The Board of Directors
George Campbell Painting Corp.

I hereby resign as Director and President of George Campbell Painting Corp. effective immediately.

George W. Campbell, Jr.

Witness:

Theodore M. Ruzow
Harry Lipner

Exhibit B Annexed to Petition

Letter Dated April 21, 1965

[LETTERHEAD OF]

NEW YORK CITY HOUSING AUTHORITY
250 Broadway
New York, N. Y. 10007

April 21, 1965

George Campbell Painting Corp.
40-11 149th Street
Flushing 52, New York

Re: Contracts Nos.
PD 65-5A (McKinley, Morris & Morrisania)
PD 65-10C (First & Riis (F & C)
PD 65-14B (Lehman & Taft)

Gentlemen:

The Authority has been officially informed by the District Attorney of New York County that George Campbell, Jr., an officer of your company, has refused to waive immunity when subpoenaed to testify before the Grand Jury of that county in connection with a pending investigation to determine whether the crimes of bid rigging on public contracts, bribery of a public officer, bribery of a labor official, extortion, coercion, assault, and conspiracy to commit each of those crimes, has occurred in New York County.

Please take notice that by reason of the foregoing, and pursuant to the provisions of Section 38 of the General Conditions of the above contracts, the Authority has directed, and you are hereby advised, that such Contracts be and they hereby are cancelled and terminated, effective immediately. You are directed to remove immediately from

each of the projects covered by the above Contracts all your materials and equipment.

Please take further notice that in accordance with the further provisions of said Section 38 the Authority has directed, and you are hereby advised, that said George Campbell, Jr., and any firm, partnership or corporation of which he is a member, partner, director or officer, including your company, has been and will be disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with the Authority for goods, work or services, for a period of five (5) years after such refusal.

Yours very truly,

Gerald J. Carey
General Manager

Certified Mail
Return Receipt Requested

Exhibit C Annexed to Petition

Letter Dated April 9, 1965

[LETTERHEAD OF]

GEORGE CAMPBELL PAINTING CORP.
40-11 149th Street
Flushing, N. Y. 11352

April 9, 1965

New York City Housing Authority
250 Broadway
New York, New York 10007

Gentlemen:

Please be advised that George William Campbell, Jr. resigned as an officer and director of our corporation on March 26, 1965.

Very truly yours,

GEORGE CAMPBELL PAINTING CORP.
Marian Rizzi
Secretary

Pnsc

Exhibit C-1 Annexed to Petition

Letter Dated April 23, 1965

[LETTERHEAD OF]

RUZOW & LIPNER
ATTORNEYS AND COUNSELLORS AT LAW
501 Fifth Avenue
New York 17, N. Y.

April 23, 1965

New York City Housing Authority
250 Broadway
New York, New York 10007

Att. Mr. Gerald J. Carey
General Manager

Re: George Campbell Painting Corp.
Morris Houses, McKinley and
Morrisania Houses
Contract No. PD 65-5A
Amt. of Contract—$80,630.00

First and Riis Houses
Contract No. PD 65-10C
Amt. of Contract—$61,395.00

Lehman Village & Taft Houses
Contract No. PD 65-14B
Amt. of Contract—$8,500.00

Dear Sir:

We are the attorneys for George Campbell Painting Corp. and have been requested to write to you by our client, with regard to the following matter.

On April 9, 1965, a letter was addressed to the Authority advising you that George William Campbell, Jr. had re-

signed as an officer and director of their corporation on March 26, 1965, a copy of which is attached herewith.

On April 20, 1965, the employees of George Campbell Painting Corp. were directed to cease their work at the site.

On April 21, 1965, George Campbell Painting Corp. received a requisition, which contained a written statement to the effect that their contract was cancelled April 20, 1965.

On April 21, 1965, the undersigned spoke to Mr. Fitzsimmons of the Legal Department of the New York City Housing Authority and was informed that a letter was in the mail to George Campbell Painting Corp. cancelling the several contracts between the Authority and them, including the above referred to contracts.

Mr. Fitzsimmons further said that this action was taken as a result of information received from the District Attorney of New York County's office and mentioned having received it from Assistant District Attorney Joseph Phillips. At this point in the conversation, the undersigned asked Mr. Fitzsimmons if the Authority had received and had before it, at the time it made the decision to cancel the contracts of George Campbell Painting Corp., the aforesaid letter of April 9, 1965 attached herewith. Mr. Fitzsimmons did not answer the question propounded and I then told him that the letter stated that George William Campbell, Jr. had resigned as an officer and director of George Campbell Painting Corp. on March 26, 1965 and that this was a fact. I also informed Mr. Fitzsimmons that a similar communication had been sent to Mr. Joseph Phillips, Assistant District Attorney, on April 9, 1965, giving Mr. Phillips the same information regarding the resignation of Mr. Campbell.

I requested Mr. Fitzsimmons to arrange a hearing or give the contractor and his attorneys some opportunity to present the facts regarding the resignation, because of their significance relevant to the acts of cancellation of the contracts by the Authority.

Exhibit C-1 Annexed to Petition

On April 23, 1965, George Campbell Painting Corp. received a letter from the Authority formally notifying it of the proposed cancellation of the above referred to contracts.

I direct your attention to Section 38 of the Amendments to General Conditions entitled "Cancellation and Disqualification for Failure to Waive Immunity". It is a fact that George William Campbell, Jr. refused to waive immunity at an appearance before a Grand Jury of New York County on April 14, 1965.

Your attention is directed to Subdivision (a) of Section 38, which clearly speaks in the present tense, when it refers to the disqualification of the person failing to waive immunity and in Subdivision (b), it speaks in the present tense, when it refers to the right of the Authority to cancel existing contracts as a result of the relationship between the person failing to waive immunity and the corporation under contract with the Authority.

It is respectfully submitted that if George William Campbell, Jr. resigned as an officer, director and stockholder prior to his being called upon to waive immunity and prior to his failure to waive immunity, that the provisions of Section 38 have no application and should not be applied or enforced by the Authority, with relation to any contracts existing between the Authority and George Campbell Painting Corp.

Please be advised that all officers and directors of George Campbell Painting Corp., who have been requested to appear before the New York County Grand Jury have voluntarily appeared, without subpoena, and have voluntarily signed waivers of immunity.

As time is of the essence and great and irreparable harm and damages are accruing hourly to George Campbell Painting Corp., this letter is being hand-delivered to your office, to request an immediate hearing by the Authority with regard to the cancellation of the contracts and the

application of Section 38 thereto and the related question of the resignation of George William Campbell, Jr. as an officer, director and stockholder of George Campbell Painting Corp.

Very truly yours,

RUZOW & LIPNER
By

TMR;ag
Enc. Copy of letter of
George Campbell Painting Corp.
dated April 9, 1965

DELIVERED BY HAND

Exhibit D Annexed to Petition

Telegram Dated April 27, 1965

WESTERN UNION

[TELEGRAM]

New York NY Apr 27 1965

Gerald J Carey

N. Y. City Housing Authority 250 Bway NYK

We respectfully request prompt reply to our letter of April 23rd regarding George Campbell Painting Corp. requesting hearing on cancellation.

Theodore M Ruzow 501 Fifth Ave. NYC

Exhibit E Annexed to Petition

Letter Dated May 5, 1965

[LETTERHEAD OF]

NEW YORK CITY HOUSING AUTHORITY
250 Broadway New York, N. Y. 10007

May 5, 1965

Ruzow & Lipner, Esqs.
501 Fifth Avenue
New York 17, N. Y.

Re: George Campbell
Painting Corp.

Gentlemen:

This will acknowledge your letter of April 23, 1965 and telegram of April 27, 1965.

The contents of your letter indicate no basis for any change in the Authority's determination, and you are therefore advised that there is no purpose to further correspondence upon or discussion of this matter.

Yours very truly,

Gerald J. Carey
General Manager

Exhibit F Annexed to Petition

Notice of Claim Dated July 2, 1965

In the Matter of the Claim of

GEORGE CAMPBELL PAINTING CORP.

against

THE NEW YORK CITY HOUSING AUTHORITY

SIRS:

TAKE NOTICE that the undersigned, GEORGE CAMPBELL PAINTING CORP., with its principal place of business at 40-11 149th Street, Flushing, County of Queens, New York, claims:

1) Damages against The New York City Housing Authority in the sum of ONE MILLION ($1,000,000.00) DOLLARS,

2) A right to have its cancelled contracts with The New York City Housing Authority reinstated, and

3) The order barring it from future bidding for a period of five (5) years vacated, because of The New York City Housing Authority's wrongful interpretation and application of the provisions of the contract entered into by and between George Cambell Painting Corp. and The New York City Housing Authority and the applicable statutes.

The damages, wrongful cancellation of the contracts and wrongful barring of the claimant from future bidding for a period of five (5) years were sustained as a result of the

action by The New York City Housing Authority purportedly pursuant to provisions of the contract and applicable statutes claiming a violation thereof by a member, partner, director or officer of the claimant refusing to sign a waiver of immunity. The New York City Housing Authority in making the determination of cancelling the existing contracts and barring petitioner from future bidding for five (5) years for the alleged refusal of George Campbell, Jr. to waive immunity before the New York Grand Jury, was a breach of contract and violated the claimant's rights and was based upon the erroneous information and/or interpretation of the aforesaid contracts and statutes in that the aforesaid George Campbell, Jr. was no longer an officer, director or stockholder of the petitioner at the time he refused to waive immunity before the Grand Jury, and, moreover, was not an officer, director or stockholder at the time a subpoena was served upon him for his appearance as aforesaid. The decision by The New York City Housing Authority was arrived at despite the fact that they were informed by letter dated April 9, 1965 that George Campbell, Jr. was no longer an officer and director of the corporation.

The undersigned, George Campbell Painting Corp., claims damages in the sum of One Million ($1,000,000.00) Dollars for loss of profits on contracts they were prevented from obtaining because of said wrongful determination by The New York City Housing Authority.

Take Further Notice that the undersigned, George Campbell Painting Corp., hereby presents its claims as aforesaid respectively for adjustment, reinstatement, vacature of the existing prohibition and payment, and notifies you that unless the same are adjusted, reinstated, vacated and paid within thirty (30) days from the date of their presentation to you, it is the intention of the undersigned to commence an action or actions, a proceeding or proceed-

ings thereon in the Supreme Court of the State of New York, County of New York, against The New York City Housing Authority and its members for the relief sought herein, with costs and disbursements in the action or actions, proceeding or proceedings as aforesaid.

Dated: Flushing, New York
July 2, 1965

GEORGE CAMPBELL PAINTING CORP.

By MARIAN C. RIZZI

State of New York)
County of Queens) ss.:

On this 2nd day of July 1965, before me personally came Marian C. Rizzi, to me known, who, being duly sworn, did depose and say, that she resides at 55 Rose Drive, Great Neck, New York; that she is the Secretary of George Campbell Painting Corp., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she signed her name thereto by like order.

HARRY LIPNER
Notary Public

HARRY LIPNER
Notary Public, State of New York
No. 41-7564430 Queens County
Term Expires March 30, 1966

Exhibit F Annexed to Petition

State of New York)
County of Queens) ss.:

MARIAN C. RIZZI, being duly sworn, deposes and says:

That she is the Secretary of George Campbell Painting Corp., the corporation named in the within Notice of Claim; that she has read the foregoing Notice of Claim and knows the contents thereof; and that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, she believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by George Campbell Painting Corp. is because the said George Campbell Painting Corp. is a domestic corporation and deponent is an officer thereof, to wit, its Secretary.

MARIAN C. RIZZI

Sworn to before me this
2nd day of July 1965

HARRY LIPNER
Notary Public, State of New York
No. 41-7564430 Queens County
Term Expires March 30, 1966

Exhibit G Annexed to Petition

NEW YORK CITY HOUSING AUTHORITY

News Release Dated Friday, May 28, 1965

250 Broadway
New York, N. Y. 10007

From: Oscar Kanny
Director of Public Relations
433-5013

For Immediate Release
Friday, May 28, 1965

William Reid, Chairman of the New York City Housing Authority, announced today cancellation of the existing contracts of Eli Smith of Smith Decorating Co., Inc., 327 Canal Place, the Bronx and barring it from future bidding for five years for refusing to answer relevant questions before the New York County Grand Jury.

Contracts total $193,061.

This action was taken pursuant to the terms of the contracts under which a contractor who after signing a waiver of immunity refuses to answer relevant questions before a Grand Jury and therefore incurs these penalties.

New York County District Attorney Frank S. Hogan had advised the Authority of such refusal in a letter to Mr. Reid received this morning and the above action by the Authority followed later in the day.

District Attorney Hogan's office, with the Authority's cooperation, has been conducting an exhaustive investigation into painting contracts.

Notice of Respondents' Cross-Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the notice of petitioner's motion herein dated October 4, 1965, the petition herein of George Campbell Painting Corp., verified the 2nd day of October, 1965, the exhibits annexed thereto, and upon all the proceedings heretofore had herein, the undersigned will cross-move this court at Special Term, Part I, on October 25, 1965, at 9:30 A.M. upon the return of the application made herein by petitioner for judgment,

Pursuant to Section 7804(f) CPLR, dismissing the petition as a matter of law, upon the following grounds:

(a) Petitioner has an adequate remedy at law.

(b) The petition fails to state facts sufficient to warrant the relief sought therein;

(c) The determination sought to be challenged herein should properly, and could adequately, have been reviewed by appeal to this court pursuant to the provisions of Section 2603 of the Public Authorities Law; and

(d) This proceeding is accordingly barred under the provisions of Section 7801 subdivision 1, CPLR, and this court does not have jurisdiction of the subject matter in this proceeding.

Dated: New York, October 20, 1965.

Yours, etc.,

HARRY LEVY
Attorney for Respondents

To:

RUZOW & LIPNER, Esqs.
Attorneys for Petitioner
ALBERT A. BLINDER, of Counsel

Order and Judgment Dismissing the Petition

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse thereof, on the 14th day of December, 1965.

Present:

Hon. GEORGE TILZER, Justice.

Index No. 6987/65

In the Matter of the Application of
GEORGE CAMPBELL PAINTING CORP.,
Petitioner,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY,
Respondents,

For a Review pursuant to Article 78 of the Civil Practice Law and Rules.

Petitioner, by its attorneys, Ruzow & Lipner, having duly petitioned for an order annulling the determination by respondents barring and otherwise disqualifying petitioner from future bidding on public contracts for a period

Order and Judgment Dismissing the Petition

of five years, respondents having cross-moved to dismiss the petition, and said petition and cross motion having regularly come on to be heard,

Now, upon reading and filing the notice of petition, dated October 4, 1965, the petition verified October 2, 1965, by Marian Campbell Rizzi, secretary of petitioner, in support of the motion with exhibits annexed and upon the notice of cross motion dated October 20, 1965, and after hearing Ruzow & Lipner, Esqs., Albert A. Blinder, Esq., of counsel, in support of the petition, and in opposition to the cross motion, and Harry Levy, Esq., Paul W. Hessel, and I. Stanley Stein, Esq., of counsel, in opposition to the petition and in support of the cross motion, and after due deliberation having been had hereon,

Now, upon motion of Ruzow & Lipner, attorneys for petitioner, it is

ORDERED, that the petition is denied and the cross motion granted and it is further

ORDERED, ADJUDGED AND DECREED that the petition be and the same hereby is dismissed, that the foregoing be without prejudice to petitioner commencing a plenary action for the same or similar relief requested in the petition herein.

Enter

/s/ George Tilzer
J. S. C.

JAMES MCGURRIN, Clerk

Filed Jan. 10, 1965 at 10:45 A.M.
County Clerk's Office of New York County

Opinion of Tilzer, J.

(48 Misc. 2d 544, 265 N.Y.S. 2d 304)

This is an article 78 proceeding instituted by petitioner for an order annulling the determination made by respondent New York City Housing Authority barring and otherwise disqualifying petitioner from future bidding on public contracts for a period of five years. Respondent cross-moves, prior to answer, to dismiss the petition on multiple grounds.

The proceeding stems from the refusal of an alleged former officer of petitioner, George Campbell, Jr., to sign a waiver of immunity when called before a grand jury of New York County, in its investigation to determine whether the crime of bid rigging on public contracts, among others, had occurred in New York County.

The petition alleges that George Campbell, Jr., resigned on March 26, 1965, as an officer or director of petitioner, and on or about that date divested himself of his stockholdings. That since that date, he had been employed as an estimator by petitioner, a position which does not entail any management functions. That thereafter, on April 13, 1965, he was served with a subpoena to appear before the grand jury on April 14, 1965; that he did appear on said date, but refused to sign a waiver of immunity and was not questioned by the grand jury.

Such alleged resignation and divestiture of his stock interest in the corporation by George Campbell, Jr., prior to his refusal to waive immunity, appears to be the basis for this proceeding.

The question for determination is whether the petitioner presents a proper case for an article 78 proceeding. Respondents contend that petitioner has an adequate remedy at law. They rely on Public Authorities Law, section 2601, requiring that a clause shall be inserted in all contracts with any public authority created by the state for work or services performed or to be performed or goods sold or to be sold, that upon the refusal of any person when called to testify before a grand jury concerning any transaction or contract had with the state, public authority, &c., to sign a waiver of immunity, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer, shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority for goods, work or services for a period of five years after such refusal. The provision, mandated by section 2601, is contained in each of respondent's contracts with petitioner, under section 38 of the amendments to the general conditions thereof.

Respondent received a letter from the District Attorney of New York County stating that said George Campbell, Jr., of the petitioner corporation had refused to sign a waiver of immunity before the grand jury. Upon receipt of the district attorney's letter, the authority canceled the painting contracts with petitioner, and disqualified petitioner, as well as said George Campbell, Jr., and any other firm, partnership or corporation of which he is a member, partner, director or officer, from entering into contracts with the authority for a period of five years. Petitioner was so informed by letter of the Authority. This letter states that such action was taken pursuant to section 38

of the General Conditions of the contracts. Thus respondent argues that the disqualification is pursuant to contract with petitioner and if it was erroneous, petitioner's remedy is by way of plenary suit based on the contract.

The fact that section 38 of the General Conditions of the contracts was incorporated therein by reason of the mandate of section 2601 of the Public Authorities Law does not make its provisions any the less a purely contractual matter between the Authority and the petitioner. Here it appears that petitioner has a remedy based upon contracts with respondent.

The scheme of the Public Authorities Law provides not one, but two means by which the penalty of disqualification may be invoked against a recalcitrant contractor refusing to cooperate in a grand jury investigation involving public contracts. Thus, section 2601 provides for the mandatory contract provision whereby both cancellation and disqualification may be applied as a matter of contractual agreement between a public authority and such contractor. Section 2602, on the other hand, provides a purely statutory basis solely for disqualification even if such contractual provision were non-existent.

The court is not persuaded that this is a proper case for a proceeding under article 78. It is available only in those situations where there are no other remedies and the conditions surrounding its use are not found in the ordinary plenary suit (Matter of Wilson v. Board of Education, &c., 276 App. Div. 482).

Accordingly, the application is denied and the cross-motion is granted dismissing the petition without prejudice to a plenary suit. Settle judgment.

Stipulation as to Prior Proceedings

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter of the Application of

GEORGE CAMPBELL PAINTING CORP.,

Petitioner-Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Respondents-Respondents.

For a Review pursuant to Article 78 of the Civil Practice Law and Rules.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the Notice of Respondents' Cross-Motion appearing at page 33 of this record referring to "all the proceedings heretofore had herein" relates to an Article 78 proceeding also bearing Index No. 6987/65 but having as its caption the following:

Stipulation as to Prior Proceedings

Index No. 6987/65

In the Matter of the Application

of

GEORGE CAMPBELL PAINTING CORP.,

Petitioner,

For a Review Pursuant to Article 78 of the Civil Practice Law and Rules and Section 103(c) of the General Municipal Law,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of The New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY, LOUIS J. LEFKOWITZ, Attorney General of the State of New York and FRANK S. HOGAN, District Attorney of the County of New York,

Respondents.

IT IS FURTHER STIPULATED AND AGREED, subject to the approval of this Court that either party has the right to refer to this prior proceeding in briefs or on the argument in the interest of justice since it was referred to in the briefs and argument before Mr. Justice Tilzer whose order and judgment is the subject of this appeal. Upon the argument of this appeal, the original file in said prior proceeding will be subpoenaed from the Clerk of New York County to be made available to this Court.

Dated: New York, April 11, 1966.

RUZOW & LIPNER
Attorneys for Plaintiff-Appellant

HARRY LEVY
Attorney for Defendants-Respondents

SO ORDERED:

BB

Order of Affirmance

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 3rd day of November, 1966.

Present:

Hon. Charles D. Breitel,		Justice Presiding
Hon. Benjamin J. Rabin,	)	
Hon. Harold A. Stevens,	)	Justices
Hon. Louis J. Capozzoli,	)	
Hon. Earle C. Bastow,	)	

10763

In the Matter of the Application of

GEORGE CAMPBELL PAINTING CORP.,

Petitioner-Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY,

Respondents-Respondents,

For a Review pursuant to Article 78 of the Civil Practice Law and Rules.

An appeal having been taken to this Court by the petitioner-appellant from the order and judgment (one paper)

Order of Affirmance

of the Supreme Court, New York County, entered on January 10, 1966, granting respondents' cross-motion to dismiss the petition,

And said appeal having been argued by Mr. Albert A. Blinder of counsel for the appellant, by Mr. Paul W. Hessel of counsel for respondents-respondents, by Mr. Robert E. Hugh of counsel for Hon. Louis J. Lefkowitz, Attorney General of the State of New York, appearing pursuant to Executive Law, §71, and a brief amicus curiae having been filed on behalf of the District Attorney, New York County; and due deliberation having been had thereon,

It is unanimously ordered and adjudged that the order and judgment (one paper) so appealed from be and the same is hereby, in all things, affirmed; and that the respondents recover of the appellant $50 costs and disbursements of this appeal.

Enter:

Hyman W. Gamso
Clerk.

Opinion of the Appellate Division

275 N.Y.S. 2d 363 (not officially reported)

Order and judgment (one paper) unanimously affirmed, with $50 costs and disbursements to the respondents. No opinion. Order filed.

Remittitur from Court of Appeals

No. 115

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

Witness,

The Hon. STANLEY H. FULD, Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

Remittitur July 7, 1967

1. No. 115 67

In the Matter of the Application of

George Campbell Painting Corp.,

Appellant,

vs.

William Reid, & ors., &c., & ano.,

Respondents,

For a Review &c.

BE IT REMEMBERED, That on the 12th day of March in the year of our Lord one thousand nine hundred and sixty-seven, George Campbell Painting Corp., the appellant in

this cause, came here unto the Court of Appeals, by Ruzow & Lipner, its attorneys, and filed in the said Court a return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And William Reid, & ors., &c., & ano., the respondents in said cause, afterwards appeared in said Court of Appeals by Harry Levy, their attorney.

Which said return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Albert A Blinder, of counsel for the appellant, and by Mr. Paul W. Hessel, of counsel for the respondents, and by Mr. Samuel A. Hirshowitz, of counsel for the Attorney General, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court herein be and the same hereby is affirmed, with costs.

And it was also further ordered that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according

to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office,
Albany, July 7, 1967.

[SEAL]

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON
Clerk.

Opinion of Court of Appeals, State of New York

20 N. Y. 2d 370

283 N.Y.S. 2d 31

229 N.E. 2d 602

STATE OF NEW YORK

COURT OF APPEALS

[SAME TITLE]

PER CURIAM:

This is an action to nullify a determination of the New York City Housing Authority disqualifying the appellant corporation from bidding on future contracts with the Authority. In addition the appellant seeks an injunction against the Authority's enforcement of its decision. The disqualification is mandated by Public Authorities Law §2601 since the appellant's former president appeared before a grand jury investigation bid-rigging and refused to sign a waiver of immunity.

We hold that section 2601 of the Public Authorities Law is constitutional (*Matter of Gardner* v. *Broderick*, 20 N Y 2d 227, 282 N Y S 2d 487, 229 N.E. 2d 184, decided herewith) and that the disqualification imposed on the appellant corporation is valid. The fact that the appellant's officer resigned his position and that the resignation was accepted prior to his appearance before the grand jury and his refusal to sign a waiver of immunity is not controlling. Where the termination of the relationship of the individual officer with the corporation occurs almost contemporaneously with his refusal to sign a waiver of immunity or where it is obvious that the resig-

nation was tendered and accepted solely for the purpose of avoiding the statutory disqualification, the person so resigning or otherwise departing shall be deemed to have acted in his capacity as a corporate officer when he refused to sign the waiver.

There may be times when the statute will operate to penalize a corporation which had severed its connection with the recalcitrant officer and which has otherwise been cooperative. The Legislature has, however, recognized this problem and has specified a procedure by which the disqualification can be removed under such circumstances. (Public Authorities Law §2603). The appellant's exclusive remedy is the procedure outlined in that statute.

The orders of the Appellate Division should be affirmed with costs.

FULD, C.J., and VAN VOORHIS, BURKE, SCILEPPI, BERGAN and KEATING, JJ., concur.

BREITEL, J., taking no part.

Orders affirmed.

Notice of Appeal to the Supreme Court of the United States

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 6987/65

In the Matter of the Application of

GEORGE CAMPBELL PAINTING CORP.,

Petitioner-Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY,

Respondents-Appellees.

For a Review pursuant to Article 78 of the Civil Practice Law and Rules.

I. Notice is hereby given that GEORGE CAMPBELL PAINTING CORP., the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals affirming the dismissal of appellant's petition entered in this action on July 7, 1967.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the entire record in this cause, for transmission to the Clerk

of the Supreme Court of the United States, and include in said transcript the following:

1. Remittitur dated July 7, 1967 from the Court of Appeals.
2. Opinion of the Court of Appeals.
3. Order granting permission to appeal to the Court of Appeals.
4. Order of the Appellate Division.
5. Opinion of the Appellate Division.
6. Notice of Appeal to the Appellate Division.
7. Order and Judgment of Special Term.
8. Notice of Petition.
9. Petition and Exhibits "A"—"G" annexed thereto.
10. Notice of Respondent's cross motion.
11. Opinion of Tilzer, J.
12. Stipulation as to prior proceedings.

III. The following questions are presented by this appeal:

1. Is the 14th Amendment offended by New York State's Public Authorities Law, §2602, which disqualifies a corporation from eligibility to bid on public contracts if one of its officers or directors asserts his privilege against self incrimination when called before a grand jury?

a) If not, does the fact that the recalcitrant witness resigned his office and surrendered his

control of the company's affairs prior to being called as a witness make a difference?

2. Is New York State's statutory requirement, Public Authorities Law §2601, that all public contracts contain an agreement to waive the privilege against self incrimination an unconstitutional condition of doing business with the state and its agencies?

RUZOW & LIPNER
Attorneys for Petitioner-Appellant
Office & Post Office Address:
122 East 42nd Street
Borough of Manhattan
City of New York

To:

CLERK, Supreme Court of the State of New York
County of New York

HARRY LEVY
Attorney for Respondents-Appellees
250 Broadway
New York, New York

LOUIS J. LEFKOWITZ
Attorney General of the State of
New York appearing pursuant to
Executive Law #71
Albany, New York 12224

Order Noting Probable Jurisdiction

SUPREME COURT OF THE UNITED STATES

No. 673 ....., October Term, 1967

GEORGE CAMPBELL PAINTING CORP.,

Appellant,

v.

WILLIAM REID, et al.

APPEAL from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 635.

January 29, 1968

Order to Show Cause

At a Special Term, Part II of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse thereof, 60 Centre Street, Borough of Manhattan, City and State of New York, on the 7th day of January, 1966.

Present:

HON. GEORGE TILZER, Justice

[SAME TITLE]

Upon the annexed affidavit of George Morvan, sworn to January 6th, 1966, and the annexed complaint, verified January 6th, 1966, and good cause shown therefor, let the defendants or their attorneys show cause before this Court at a Special Term, Part I, to be held in the County Courthouse, 60 Centre Street, New York, New York, on the 12th day of January, 1966, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein enjoining defendants *pendente lite* from barring or disqualifying plaintiff from future bidding and directing the restoration of its name to the qualified bidders list or, alternatively, directing that the issues raised herein be set down for an immediate trial, and for such other and further relief as to this Court may seem just and proper; and it is further

ORDERED, that service of a copy of this Order and the papers upon which it is granted upon defendants on or before January 10, 1966, at or about 10 A.M. shall be deemed good and sufficient service thereof.

Enter

G. T.
Justice of the Supreme Court
of the State of New York

Affidavit of George Morvan in Support of Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

State of New York)
County of New York) ss.:

GEORGE MORVAN, being duly sworn, says:

1. I am the president of the plaintiff corporation and make this affidavit in support of its motion for a temporary injunction.

2. For more than thirty years and until the actions complained of herein, the plaintiff was one of the largest and most reputable painting contractors in the United States. In the last six years in the State of New York alone, plaintiff performed over Five Million Dollars of painting services for New York City and State Agencies.

3. Among others, plaintiff has provided services to the New York City Housing Authority, Department of Public Works, Parks, Department of Sanitation, Board of Education, Department of Hospitals, D. W. S. G. & E., The Port of New York Authority, the New York City Transit Authority and the New York State Department of Public Works.

4. In addition, plaintiff has enjoyed a substantial business reputation throughout the country in both public and private ventures. Some of the major contracts undertaken and completed satisfactorily by the plaintiff during the

last ten years are listed in paragraph "7" of the verified complaint annexed hereto. The list is impressive and the company takes pride in its accomplishments.

5. Because of certain actions taken by defendants, more fully set forth below, plaintiff finds itself disgraced in the business community, barred from submitting bids to public agencies in this State, and, as a result, has similarly been barred by public agencies in other States.

6. The reverberation of plaintiff's disqualification has also been felt in plaintiff's non-public business sphere.

7. Defendants purported to act under Section 38 of the amendments to General Conditions of Contract Nos. PD65-5A (McKinley, Morris & Morrisania); PD65-10C (First & Riis [F & C]); and PD65-14B (Lehman & Taft), between plaintiff and defendants, the contract provision inserted pursuant to Section 2601 of the Public Authorities Law which provides a five year disqualification from bidding on public contracts to any person who refuses when duly requested, to sign a "Waiver of Immunity". Further, any firm or corporation of which such person is a partner, member, officer or director is similarly disqualified.

8. Defendants' claim that the refusal of George Campbell, Jr. to sign a "Waiver of Immunity" on April 13, 1965, thereby results in the disqualification of plaintiff, even though George Campbell, Jr. was not then an officer, director or stockholder of the plaintiff corporation.

9. On or about March 26, 1965, George Campbell, Jr., who, upon the death of George Campbell, Sr. in August, 1964, assumed the presidency of plaintiff, became aware of the pendency of an investigation by the Grand Jury

which promised to encompass numerous contracts between plaintiff and various New York City Agencies.

10. Both George Campbell, Jr. and all of the other officers and members of the Board of Directors of plaintiff, including your deponent, were advised by counsel that they could expect to be subpoenaed and requested to waive statutory immunity.

11. We were further advised by counsel of the penalties that would result if any of us refused to waive immunity. Counsel laid special emphasis on the fact that if for any personal reason any of the officers or directors of the plaintiff did not deem it in his or her interest to waive immunity, that it was their duty to inform the Board and suitable arrangements made for their resignation because of the conflict between their personal interest and the plaintiff's best interest.

12. Of all of the officers and directors of plaintiff, only George Campbell, Jr., then only twenty-four years of age, and having the fewest years of service with the company, deemed it advisable to refuse to waive immunity, and he was therefore requested to and did resign. He also disposed of his stock in plaintiff.

13. On April 9, 1965, the Board of Directors of plaintiff met and accepted the resignation of George Campbell, Jr. (Exhibit "A" annexed hereto), and a letter was sent to defendants so informing them (Exhibit "B" annexed hereto).

14. Upon information and belief, the aforesaid Grand Jury met on April 13, 1965, George Campbell, Jr. was subpoenaed to testify, refused to sign a "Waiver of Immunity", and defendants were so informed in due course.

15. On April 20, 1965, your deponent, and upon information and belief, other officers and directors of plaintiff, appeared before the aforesaid Grand Jury and, when asked, signed "Waivers of Immunity" and testified.

16. The following day plaintiff received from defendants a notice of disqualification (Exhibit "C" annexed hereto).

17. By letter, hand delivered, on April 23, 1965 (Exhibit "D" annexed hereto), counsel for plaintiff attempted to disabuse defendants of the numerous factual errors contained in their notice of disqualification, the most significant of which was the fact that the said George Campbell, Jr. was not an officer or director of plaintiff as defendants' notice alleged.

18. I am informed by counsel that defendants have taken the position that under Section 38 of the General Conditions of the aforesaid contracts between plaintiff and defendants and under Section 2601 of the Public Authorities Law, so long as George Campbell, Jr. was an officer or director when the contract was made, his resignation prior to his refusal to waive immunity is meaningless.

19. I am informed by counsel that the interpretation placed on the contracts and statute by defendants is clearly erroneous as the annexed Memorandum of Law amply demonstrates.

20. I am informed and believe that within the next thirty to sixty days, several millions of dollars of work will be offered for bid by public agencies in this city and state, for which plaintiff is eminently qualified to bid and perform.

Affidavit of George Morvan

21. Plaintiff sought the relief requested herein by proceeding under Article 78 of the C. P. L. R. for a review of defendants' determination. This Court held that the proper method for obtaining a review of defendants' acts is by a plenary action (New York Law Journal, December 6, 1965, page 18, Tilzer, J.).

22. Aside from the Article 78 proceeding, no previous request for the relief requested herein has been made to this or any other court.

23. No previous application for the relief asked for in this application.

George Morvan

(Sworn to January 6, 1966.)

Exhibit A Annexed to Morvan Affidavit

MINUTES OF A SPECIAL MEETING OF BOARD OF DIRECTORS

GEORGE CAMPBELL PAINTING CORP.,

A special Meeting of the Board of Directors of George Campbell Painting Corp. was held on the 9th day of April, 1965 at 10:30 AM o'clock in the offices of Ruzow and Lipner, 501 Fifth Avenue, New York City.

The following were present:

George Morvan	Jane Jesinsky
Marian Rizzi	Elizabeth Campbell
Anita Ponte	Theodore M. Ruzow

Theodore M. Ruzow served as Acting Chairman and called the meeting to order.

The Acting Chairman presented the resignation of George Campbell, Jr., as President and Director of George Campbell Painting Corp. dated March 26, 1965, and also surrendered Stock Certificate #6 in the amount of 10 shares transferred to George Campbell Painting Corp. to the Directors of George Campbell Painting Corp. at the meeting.

On motion duly made, seconded and unanimously carried, it was

> RESOLVED, that committee be elected to select a president. The committee to be Elizabeth Campbell, Jane Jesinsky, Anita Ponte, with Marian Rizzi as Secretary to the Committee.
>
> RESOLVED, that the Committee would give their report in thirty (30) days.

There being no further business before the meeting, the same was, on motion, duly adjourned.

Dated: April 9, 1965

Marian Rizzi
Secretary

Exhibit A Annexed to Morvan Affidavit

Letter of Resignation Annexed to Exhibit A

March 26, 1965

To The Board of Directors
George Campbell Painting Corp.

I hereby resign as Director and President of George Campbell Painting Corp. effective immediately.

George W. Campbell, Jr.

Witness:

Theodore M. Ruzow
Harry Lipner

Exhibit B Annexed to Morvan Affidavit

Letter

[LETTERHEAD OF]

GEORGE CAMPBELL PAINTING CORP.
P. O. Box 631, 40-11 149th St.,
Flushing, N. Y. 11352

April 9, 1965

New York City Housing Authority
250 Broadway
New York, New York 10007

Gentlemen:

Please be advised that George Campbell, Jr. resigned as an officer and director of our corporation on March 26, 1965.

Very truly yours,

GEORGE CAMPBELL PAINTING CORPORATION

Marian Rizzi,
Secretary

Exhibit C Annexed to Morvan Affidavit

Notice of Disqualification

[LETTERHEAD OF]

NEW YORK CITY HOUSING AUTHORITY
250 Broadway : New York, N. Y. 10007

April 21, 1965

George Campbell Painting Corp.
40-11 149th Street
Flushing 52, New York

Re: Contracts Nos.
PD 65-5A (McKinley, Morris & Morrisania)
PD 65-10C (First & Riis (F & C)
PD 65-14B (Lehman & Taft)

Gentlemen:

The Authority has been officially informed by the District Attorney of New York County that George Campbell, Jr., an officer of your company, has refused to waive immunity when subpoenaed to testify before the Grand Jury of that county in connection with a pending investigation to determine whether the crimes of bid rigging on public contracts, bribery of a public officer, bribery of a labor official, extortion, coercion, assault, and conspiracy to commit each of these crimes, has occurred in New York County.

Please take notice that by reason of the foregoing, and pursuant to the provisions of Section 38 of the General Conditions of the above contracts, the Authority has directed, and you are hereby advised, that such Contracts be and they hereby are cancelled and terminated, effective immediately. You are directed to remove immediately from each of the projects covered by the above Contracts all your materials and equipment.

Exhibit C Annexed to Morvan Affidavit

Please take further notice that in accordance with the further provisions of said Section 38 the Authority has directed, and you are hereby advised, that said George Campbell, Jr., and any firm, partnership or corporation of which he is a member, partner, director or officer, including your company, has been and will be disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with the Authority for goods, work or services, for a period of five (5) years after such refusal.

Yours very truly,

Gerald J. Carey
General Manager

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibit D Annexed to Morvan Affidavit

Letter

[LETTERHEAD OF]

RUZOW & LIPNER
ATTORNEYS AND COUNSELLORS AT LAW
501 Fifth Avenue
New York 17, N. Y.

April 23, 1965

New York City Housing Authority
250 Broadway
New York, New York 10007

Att. Mr. Gerald J. Carey
General Manager

Re: George Campbell Painting Corp.

Morris Houses, McKinley and
Morrisania Houses
Contract No. PD 65-5A
Amt. of Contract—$80,630.00

First and Riis Houses
Contract No. PD 65-10C
Amt. of Contract—$61,395.00

Lehman Village & Taft Houses
Contract No. PD 65-14B
Amt. of Contract—$8,500.00

Dear Sir:

We are the attorneys for George Campbell Painting Corp. and have been requested to write to you by our client, with regard to the following matter.

On April 9, 1965, a letter was addressed to the Authority advising you that George William Campbell, Jr. had

resigned as an officer and director of their corporation on March 26, 1965, a copy of which is attached herewith.

On April 20, 1965, the employees of George Campbell Painting Corp. were directed to cease their work at the site.

On April 21, 1965, George Campbell Painting Corp. received a requisition, which contained a written statement to the effect that their contract was cancelled April 20, 1965.

On April 21, 1965, the undersigned spoke to Mr. Fitzsimmons of the Legal Department of the New York City Housing Authority and was informed that a letter was in the mail to George Campbell Painting Corp. cancelling the several contracts between the Authority and them, including the above referred to contracts.

Mr. Fitzsimmons further said that this action was taken as a result of information received from the District Attorney of New York County's office and mentioned having received it from Assistant District Attorney Joseph Phillips. At this point in the conversation, the undersigned asked Mr. Fitzsimmons if the Authority had received and had before it, at the time it made the decision to cancel the contracts of George Campbell Painting Corp., the aforesaid letter of April 9, 1965 attached herewith. Mr. Fitzsimmons did not answer the question propounded and I then told him that the letter stated that George William Campbell, Jr. had resigned as an officer and director of George Campbell Painting Corp. on March 26, 1965 and that this was a fact. I also informed Mr. Fitzsimmons that a similar communication had been sent to Mr. Joseph Phillips, Assistant District Attorney, on April 9, 1965, giving Mr. Phillips the same information regarding the resignation of Mr. Campbell.

I requested Mr. Fitzsimmons to arrange a hearing or give the contractor and his attorneys some opportunity to present the facts regarding the resignation, because of

their significance relevant to the acts of cancellation of the contracts by the Authority.

On April 23, 1965, George Campbell Painting Corp. received a letter from the Authority formally notifying it of the proposed cancellation of the above referred to contracts.

I direct your attention to Section 38 of the Amendments to General Conditions entitled "Cancellation and Disqualification for Failure to Waive Immunity". It is a fact that George William Campbell, Jr. refused to waive immunity at an appearance before a Grand Jury of New York County on April 14, 1965.

Your attention is directed to Subdivision (a) of Section 38, which clearly speaks in the present tense, when it refers to the disqualification of the person failing to waive immunity and in Subdivision (b), it speaks in the present tense, when it refers to the right of the Authority to cancel existing contracts as a result of the relationship between the person failing to waive immunity and the corporation under contract with the Authority.

It is respectfully submitted that if George William Campbell, Jr. resigned as an officer, director and stockholder prior to his being called upon to waive immunity and prior to his failure to waive immunity, that the provisions of Section 38 have no application and should not be applied or enforced by the Authority, with relation to any contracts existing between the Authority and George Campbell Painting Corp.

Please be advised that all officers and directors of George Campbell Painting Corp., who have been requested to appear before the New York County Grand Jury have voluntarily appeared, without subpoena, and have voluntarily signed waivers of immunity.

Exhibit D Annexed to Morvan Affidavit

As time is of the essence and great and irreparable harm and damages are accruing hourly to George Campbell Painting Corp., this letter is being hand-delivered to your office, to request an immediate hearing by the Authority with regard to the cancellation of the contracts and the application of Section 38 thereto and the related question of the resignation of George William Campbell, Jr. as an officer, director and stockholder of George Campbell Painting Corp.

Very truly yours,

RUZOW & LIPNER

By

TMR;ag
Enc. Copy of letter of
George Campbell Painting Corp.
dated April 9, 1965

DELIVERED BY HAND

Summons in Support of Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Plaintiff designates New York County as the place of trial.

The basis of the venue is Defendants' residence.

Plaintiff resides at 40-11 149th Street, Flushing, County of Queens.

To the above named Defendants

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, January 7, 1966.

RUZOW & LIPNER
Attorneys for Plaintiff

Verified Complaint in Support of Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Plaintiff, George Campbell Painting Corp., by its attorneys, Ruzow & Lipner, complaining of defendants, respectfully alleges:

1. Defendants William Reid, Francis V. Madigan and Ira S. Robbins, respectively, are Chairmen and members of the New York City Housing Authority. Defendant, The New York Housing Authority, is a Public Authority, duly constituted under the New York City Housing Authority Law.

2. Plaintiff is a corporation duly organized under the Laws of the State of New York, with its principal place of business at 40-11 149th Street, Flushing, New York.

3. Plaintiff is in the business of general painting, contracting, and among other things has engaged in painting and decorating contracts for the defendant, The New York City Housing Authority.

4. Plaintiff corporation was organized in 1964 with the Estate of George Campbell, Sr. owning fifty percent of the stock therein, and the remaining fifty percent owned equally by George Campbell, Jr., Marian Campbell Rizzi, Anita Campbell Ponte, Jane Campbell Jesinsky and Barbara Campbell Dougherty.

5. Prior thereto, the business was conducted as a partnership, "George Campbell & Company". The stockhold-

ers of plaintiff were members of the partnership with the same ownership interest. At all times during his lifetime, George Campbell, Sr. was the general partner in charge of the partnership.

6. For a period of thirty years plaintiff has been engaged in general painting contracting for defendant, The New York City Housing Authority, and other Governmental agencies, and subdivisions within the State of New York and elsewhere. At no time during that period had any of its contracts been cancelled or had it been barred from future bidding because of the provisions of Section 2601 or 2602 of the Public Authorities Law, or the provisions of Section 103 of the General Municipal Law, or any other corresponding provisions of State or Federal Law.

7. During the past thirty years plaintiff has been one of the largest painting contractors in the area. Its reputation for public service contracts has been the highest. Among the major contracts undertaken and satisfactorily completed by the plaintiff during the last ten years have been:

Consolidated Edison, New York

New York City Housing Authority

New York City Department of
- Public Works
- Parks
- Sanitation
- Board of Education
- Hospitals
- D. W. S. G. & E.

Port of New York Authority

New York City Transit Authority

New York State Department of Public Works

United States Military Academy, West Point, New York

Oahe Reservoir, Pierre, South Dakota

General Electric Appliance Park, Louisville, Kentucky

Triboro Bridge, New York

Whitestone Bridge, New York

Henry Hudson Bridge, New York

Walt Whitman Bridge, Philadelphia, Pa.

Midhudson Bridge, New York

Memphis Arkinsaw Bridge, Memphis, Tennessee

Ravenwood Generating Plant, New York

Astoria Generating Plant, New York

Mahlstrom Airforce Base, Great Falls, Montana

Scott Airforce Base, Illinois

Loring Airforce Base, Caribou, Maine

New York State Court of Appeals, Albany, New York

Creedmore Hospital, New York

Harlem Valley State Hospital, Pauling, New York

United States Court House, Foley Square, New York

Yeshiva University, New York

Municipal Courts, City of New York

Bronx City Prison, New York

Raymond Street Jail, Brooklyn, New York

Grumman Aircraft Company Plant, Brookhaven, New York

8. Upon the death of George Campbell, Sr. in August 1964, George Campbell, Jr. became the president of plaintiff. George Campbell, Jr. is twenty-four years of age.

9. On March 26, 1965, he resigned as an officer and director of the plaintiff, and on or about that date he divested himself of his stockholdings in the plaintiff. Thereafter he was replaced as president by George Morvan, the former executive vice president of plaintiff. Defendants were informed on April 9th, 1965, by letter, of the aforesaid resignation of George Campbell, Jr.

10. Since March 26, 1965, George Campbell, Jr. has been employed as an estimator by the plaintiff, a position which does not entail any management functions.

11. Plaintiff has no secret agreements with George Campbell, Jr. concerning his future reinstatement or reemployment with plaintiff. He has a ten percent interest in the residue of his father's estate. No distribution has as yet been made to any legatee under the aforesaid estate which is being probated in the Surrogate's Court of Queens County, New York.

12. The aforementioned ten percent undistributed interest in the estate constitutes the only beneficial interest which George Campbell, Jr. now has in plaintiff. Upon the final distribution of the assets of the estate, plaintiff anticipates that George Campbell, Jr. will receive as his share, a monetary payment rather than a distribution in kind of stock in plaintiff now owned by the estate.

13. Thereafter, and on April 13, 1965, at the office of Albert A. Blinder, Esq., 485 Lexington Avenue, New York, New York, a detective of the New York County District Attorney's office served a subpoena upon the aforesaid George Campbell, Jr. calling for his appearance before a Grand Jury on Wednesday, April 14, 1965.

14. On April 14, 1965, George Campbell, Jr. appeared before the Grand Jury and refused to sign a Waiver of Immunity.

15. Upon information and belief, the New York County District Attorney, Frank S. Hogan, advised defendant, The New York City Housing Authority, of the refusal of George Campbell, Jr. to sign a Waiver of Immunity.

16. Upon information and belief, as a result of the aforesaid advice, the defendants determined to and did cancel the then existing contract between plaintiff and defendant The New York City Housing Authority, purporting to act pursuant to Section 38 of the General Conditions of Contracts. Said Section 38 is the provision incorporated therein by reason of the mandate of Section 2601 of the Public Authorities Law.

17. In addition, and upon information and belief, similarly purporting to act under Section 38 of the General Conditions of Contracts between plaintiff and defendant, The New York City Housing Authority, the defendants barred plaintiff from future bidding with defendant, The New York City Housing Authority, for a period of five years.

18. On or about April 21, 1965, by letter, defendants notified plaintiff of the aforesaid cancellation and disqualification.

19. Thereafter, plaintiff, by its attorneys, informed defendants by letter dated April 23, 1965, re-notifying defendants of the fact that George Campbell, Jr. was not an officer or director of the plaintiff at the time he refused to waive immunity before the Grand Jury, and further notifying the defendants that all of the officers and directors of the plaintiff (including George Morvan, the plaintiff's president) who were requested to appear before the Grand Jury and were requested to sign Waivers of Immunity did so voluntarily without subpoena and signed such Waivers of Immunity.

20. On or about May 5, 1965, defendant, The New York City Housing Authority rejected plaintiff's argument and thereafter a Notice of Claim was filed against The New York City Housing Authority claiming One million and 00/100 ($1,000,000.00) dollars in damages, together with the claim that its contract should be reinstated and the order barring it from future bidding vacated and cancelled. A copy of this Notice of Claim is annexed hereto as Exhibit A. More than thirty days have elapsed since the Notice of Claim was served, and since the depositions, pursuant to Section 157(3) of the Public Housing Law was concluded by the defendant, The New York City Housing Authority.

21. Plaintiff, to the knowledge of its officers and directors, denies that it has engaged in any practices illegal under any State or Federal Law, or under City ordinances or regulations.

22. During the six year period from 1959 until the defendants' disqualification of plaintiff in 1965, plaintiff did an average yearly business of $1,085,912.00 with New York City and New York State Agencies and with the Consolidated Edison Company, all of whom have refused

to accept bids from plaintiff as a result of the defendants' action.

23. In addition, the chief of the Bureau of Contract Administration for the State Highway Department of the State of New Jersey, on September 29, 1965, wrote to the plaintiff as follows:

> "We are returning your Contractor's Financial and Equipment Statement as of the close of business on August 31, 1965, as we have on file in this office information that your firm was banned by executive order number 138 of the Mayor of New York until April 27, 1970.
>
> "It will not be possible for your organization to qualify with our Department until this date has been reached or this executive order has been cancelled."

24. As a direct result of defendants' action, plaintiff will lose countless opportunities to bid upon contracts with public agencies throughout the United States, not to mention the incalculable loss of non-public business opportunities.

25. The damage suffered and to be suffered in the future by plaintiff is incalculable. Even after the five year ban will have come to an end, plaintiff's reputation will have been irreparably injured by defendants' actions.

26. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands a judgment permanently enjoining defendants from continuing to disqualify the plaintiff as aforesaid, together with the costs of this action.

RUZOW & LIPNER
Attorneys for Plaintiff

(Verified by George Morvan, Jan. 6, 1966.)

Exhibit A Annexed to Verified Complaint

Notice of Claim

In the Matter of the Claim of

GEORGE CAMPBELL PAINTING CORP.

against

THE NEW YORK CITY HOUSING AUTHORITY

SIRS:

TAKE NOTICE that the undersigned GEORGE CAMPBELL PAINTING CORP., with its principal place of business at 40-11 149th Street, Flushing, County of Queens, New York, claims:

(1) Damages against The New York City Housing Authority in the sum of One Million ($1,000,000.00) Dollars,

(2) A right to have its cancelled contracts with The New York City Housing Authority reinstated, and

(3) The order barring it from future bidding for a period of five (5) years vacated, because of The New York City Housing Authority's wrongful interpretation and application of the provisions of the contract entered into by and between George Campbell Painting Corp. and The New York City Housing Authority and the applicable statutes.

The damages, wrongful cancellation of the contracts and wrongful barring of the claimant from future bidding for a period of five (5) years were sustained as a result of

the action by The New York City Housing Authority purportedly pursuant to provisions of the contract and applicable statutes claiming a violation thereof by a member, partner, director or officer of the claimant refusing to sign a waiver of immunity. The New York City Housing Authority in making the determination of cancelling the existing contracts and barring petitioner from future bidding for five (5) years for the alleged refusal of George Campbell, Jr. to waive immunity before the New York Grand Jury, was a breach of contract and violated the claimant's rights and was based upon the erroneous information and/or interpretation of the aforesaid contracts and statutes in that the aforesaid George Campbell, Jr. was no longer an officer, director or stockholder of the petitioner at the time he refused to waive immunity before the Grand Jury, and, moreover, was not an officer, director or stockholder at the time a subpoena was served upon him for his appearance as aforesaid. The decision by The New York City Housing Authority was arrived at despite the fact that they were informed by letter dated April 9, 1965 that George Campbell, Jr. was no longer an officer and director of the corporation.

The undersigned, George Campbell Painting Corp., claims damages in the sum of One Million ($1,000,000.00) Dollars for loss of profits on contracts they were prevented from obtaining because of said wrongful determination by The New York City Housing Authority.

TAKE FURTHER NOTICE that the undersigned, George Campbell Painting Corp., hereby presents its claims as aforesaid respectively for adjustment, reinstatement, vacature of the existing prohibition and payment, and notifies you that unless the same are adjusted, reinstated, vacated and paid within thirty (30) days from the date of their presentation to you, it is the intention of the undersigned to commence an action or actions, a proceeding or proceedings

thereon in the Supreme Court of the State of New York, County of New York, against The New York City Housing Authority and its members for the relief sought herein, with costs and disbursements in the action or actions, proceeding or proceedings as aforesaid.

Dated: Flushing, New York
July 2, 1965

GEORGE CAMPBELL PAINTING CORP.
By Marian C. Rizzi

State of New York)
County of Queens) ss.:

On this 2nd day of July 1965, before me personally came Marian C. Rizzi, to me known, who, being duly sworn, did depose and say, that she resides at 55 Rose Drive, Great Neck, New York; that she is the Secretary of George Campbell Painting Corp., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she signed her name thereto by like order.

Harry Lipner
Notary Public

HARRY LIPNER
Notary Public State of New York
No. 41-7564430 Queens County
Term Expires March 30, 1966

Exhibit A Annexed to Verified Complaint

State of New York)
County of Queens) ss.:

MARIAN C. RIZZI, being duly sworn, deposes and says:

That she is the Secretary of George Campbell Painting Corp., the corporation named in the within Notice of Claim; that she has read the foregoing Notice of Claim and knows the contents thereof; and that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, she believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by George Campbell Painting Corp. is because the said George Campbell Painting Corp. is a domestic corporation and deponent is an officer thereof, to wit, its Secretary.

Marian C. Rizzi

Sworn to before me this
2nd day of July 1965

HARRY LIPNER
Notary Public State of New York
No. 41-7564430 Queens County
Term Expires March 30, 1966

Notice of Cross Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 247/1966

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Paul W. Hessel, sworn to the 31st day of January, 1966, and all the papers, documents and exhibits thereto annexed and therein referred to, plaintiff's motion for an injunction *pendente lite*, brought on by Order to Show Cause dated January 7, 1966, and the complaint herein, a cross motion will be made by the defendants pursuant to Rule 2215 of the Civil Practice Law and Rules, upon the argument of plaintiff's said motion for an injunction *pendente lite*, returnable at a Special Term, Part I, of this Court, to be held in and for the County of New York, at the Courthouse, 60 Centre Street, in the Borough of Manhattan, City, County and State of New York, on February 15, 1966, at 9:30 in the forenoon of that day or as soon thereafter as counsel can be heard, for judgment, dismissing the complaint herein pursuant to:

1. CPLR 3211 (a) 1. on the ground that one or more complete defenses to the cause of action alleged in the complaint have been established by documentary evidence.

2. CPLR 3211 (a) 2. on the ground that the Court has not jurisdiction of the subject matter of this

action in that plaintiff has available another exclusive and adequate remedy provided by law for the relief demanded in the complaint.

3. CPLR 3211 (a) 4. on the ground that there is another proceeding pending between these parties for the same cause of action alleged in the complaint herein.

4. CPLR 3211 (a) 7. on the ground that the complaint fails to state facts sufficient to constitute a cause of action.

AND for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to 2214 (b) CPLR you are required to serve any answering affidavits in opposition to this cross motion at least five (5) days before the return date hereof.

Dated: New York, N. Y., January 31, 1966.

Yours, etc.

Harry Levy
Attorney for Defendants.

To:

Ruzow & Lipner, Esqs.,
Attorneys fo Plaintiff
Albert A. Blinder, Of Counsel

Affidavit of Paul W. Hessel in Opposition to Motion and in Support of Cross Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 247/1966

[SAME TITLE]

State of New York)
County of New York) ss.:

PAUL W. HESSEL, being duly sworn, deposes and says:

1. I am an attorney at law and Deputy Counsel of the New York City Housing Authority (hereinafter referred to as the "Authority"), the defendant above named, and am associated as such with Harry Levy, Counsel to the Authority and its attorney of record herein. I am fully familiar with all of the facts relating to the subject matter of this action, having personally handled all of the prior proceedings in this Court with respect thereto hereinafter referred to. I make this affidavit upon my own knowledge of the facts herein set forth, based upon the papers and proceedings had in such proceedings, and upon documents, data and records of the Authority available to me.

2. This affidavit is submitted in opposition to plaintiff's motion for an injunction *pendente lite* and such other relief as is set forth in the Order to Show Cause herein; and in support of defendant's cross motion to dismiss plaintiff's complaint contained in the foregoing Notice thereof.

3. This is the third litigation instituted by this plaintiff in this Court for substantially the same relief as is

sought by the complaint and the present motion in this action. The first was brought on by petition verified May 4, 1965 wherein, in addition to the Authority, there were named as parties respondent the Attorney General of the State of New York and the District Attorney of New York County. Two "proceedings" were therein alleged: first, an Article 78 proceeding, and second, a proceeding "—pursuant to Section 103 (c) of the General Municipal Law and Article 4 of the Civil Practice Law and Rules." The relief sought was annulment "—of the determination of the respondents cancelling petitioner's contracts with the New York City Housing Authority and barring it from future bidding for a period of five (5) years—". Plaintiff on its own motion voluntarily discontinued the proceeding pursuant to Section 103 (c) of the General Municipal Law. The Article 78 proceeding was dismissed by this Court for failure of petitioner to file with the Authority, as a condition precedent thereto, a Notice of Claim pursuant to Section 157 of the Public Housing Law, but with leave to renew.

4. Plaintiff having served the Notice of Claim referred to in paragraph "20" of its complaint herein and annexed thereto as Exhibit A, it instituted a second litigation pursuant to Article 78 CPLR by petition verified October 2, 1965. This time it omitted the demand for reinstatement of its cancelled contracts, and sought only an annulment of the determination barring it from future bidding upon Authority contracts for a period of five years. This proceeding was also dismissed by this Court on motion of the Authority, without prejudice to petitioner commencing a plenary action for the same or similar relief. Plaintiff has served a Notice of Appeal to the Appellate Division from the judgment entered thereon, and this appeal is now pending.

5. The proceedings described in the foregoing paragraphs 3 and 4 are on file in this Court under Index No.

6987-1965. The papers therein will be requisitioned for the information of the Court in connection with the present motion and cross motion, and are hereby referred to and submitted as part of the documentary evidence upon which the branch of the cross motion under CPLR 3211 (a) (1) is based. From such papers, and the additional documentary evidence annexed as Exhibits hereto or hereinafter referred to, the further facts relevant to this present litigation are as set forth below.

6. Plaintiff is a major painting contractor who, after public bidding as required by the Public Housing Law, entered into three written contracts with the Authority prior to March 26, 1965 for maintenance painting of its public housing projects. Such contracts are specified in paragraph "7" of plaintiff's moving affidavit of George Morvan. They are hereby referred to and submitted as if annexed as Exhibits hereto.

7. The bids for each of such contracts, the contracts themselves, and the Performance and Payment Bonds made part thereof, were executed and acknowledged on behalf of plaintiff by one George Campbell, Jr. as its president, and otherwise expressly set forth therein that said George Campbell, Jr. was at the time of such execution the president of plaintiff.

8. Plaintiff was then and now is basically a family corporation, fifty percent of whose stock is owned by the estate of said George Campbell, Jr.'s late father (of which estate George Campbell, Jr. is a beneficiary). The remaining fifty percent was, at the time of the execution of said contracts and up to at least April 9, 1965, owned by said George Campbell, Jr. and his sisters.

9. At the time of the execution of said contracts said George Campbell, Jr. was also a director of plaintiff, and continued as such until at least March 26, 1965.

10. Each of such contracts contained the following standard provisions set forth in Section 38 of the Amendments to the General Conditions thereof:

> "38. *Cancellation and Disqualification for Failure to Waive Immunity*
>
> Upon the refusal by a person, when called before a Grand Jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.
>
> A. Such person and any firm, partnership, or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling or submitting bids to or receiving awards from or entering into any contracts with the Authority for goods, work or services, for a period of five (5) years after such refusal, and
>
> B. This Contract and any and all other contracts made with the Authority on or after July 1, 1959, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the Authority, without incurring any penalty or damages on account of such cancellation or termination, but mon-

ies owing by the Authority, for goods delivered or work done prior to the concellation or termination shall be paid."

11. Like other standard provisions of such public contracts required to be incorporated therein by various statutes, this provision was mandated by Section 2601 of the Public Authorities Law, reading as follows:

"2601 *Ground for Cancellation of Contract by Public Authority*

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any publlic authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid."

12. The subsequent Sections 2602 and 2603 of the Public Authorities Law read as follows:

"2602 *Disqualification to Contract with Public Authority*

Any person who, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and any firm, partnership or corporation, of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this title.

It shall be the duty of the officer conducting the investigation before the grand jury before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the superintendent of public works of the State of New York and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract."

"2603 *Removal of Disqualification of Public Contractors by Petition*

1. Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify, as provided in sections twenty-six hundred one and twenty-six hundred two of this title, may, upon ten days' notice to the attorney general and to the officer who conducted the investigation before the grand jury in which the refusal occurred, commence a special proceeding at a special term of the supreme court held within the judicial district in which the refusal occurred for a judgment discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or

corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification, as provided in section twenty-six hundred one and twenty-six hundred two of this title.

A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this subdivision.

2. Upon the filing of such petition the court may stay as to petitioner, pending a decision upon the petition, the cancellation or termination of any contracts resulting from such refusal upon such terms as to notice or otherwise as may be just.

3. At least two days prior to the return day, the officer who conducted the investigation before the grand jury and the attorney general may file answers to the petition or apply for judgment dismissing the petition as a matter of law. On or before the return day the petitioner may file a reply to the answer.

4. Upon the return day the court may, upon the petition and answer and other papers filed, forthwith render such judgment as the case requires, or if a triable issue of fact is duly raised, it shall forthwith be tried before a court sitting without a jury or before a referee. The provisions of statute or rule governing references in an action shall apply to a reference under this subdivision.

5. The court shall render judgment dismissing the petition on the merits or discontinuing the disqualification upon the ground that the public interest would be served by its discontinuance, and granting

such other relief as to the cancellation or termination of contracts as may be appropriate, but without costs to petitioner."

13. For some time prior to April, 1965, and thereafter, Hon. Frank S. Hogan, District Attorney of New York County, had been conducting an investigation before a Grand Jury of that County to determine whether the crime of bid rigging on public contracts, among others, had occurred in New York County. Early in April, 1965 said District Attorney so informed the Authority, and further advised that certain individuals who were officers of corporations (other than plaintiff herein) having painting contracts with the Authority had refused to waive immunity and to testify in connection with such investigation.

14. By letter of April 16, 1965 the District Attorney informed the Authority that said George Campbell, Jr., of the plaintiff corporation, had also refused to sign a waiver of immunity before the Grand Jury in such investigation. The letter further stated that it was sent in conformance with Section 103-b of the General Municipal Law, and requested advice as to what action the Authority would take in the matter. A copy of this letter is annexed hereto as Exhibit A.

15. Sections 103-a, 103-b, and 103-c of the General Municipal Law are identical with Sections 2601, 2602 and 2603 of the Public Authorities Law, respectively, except that the former apply to municipal corporations, whereas the latter apply to public authorities such as defendant herein. (In its original proceeding in this matter plaintiff also erroneously referred to the General Municipal rather than the Public Authorities Law, but it was agreed upon the argument that this technicality would be overlooked. In

any event, Section 103-b of the General Municipal Law, as well as Section 2602 of the Public Authorities Law, expressly requires the District Attorney, where such refusal to waive immunity has occurred, to give such notice thereof to public authorities, as well as other governmental agencies).

16. Upon receipt of the District Attorney's letter the Authority cancelled the three painting contracts with plaintiff, and disqualified it, as well as said George Campbell, Jr., and any other firm, partnership or corporation of which he is a member, partner, director or officer, from entering into contracts with the Authority for a period of five years. Plaintiff was so informed by letter of the Authority dated April 21, 1965, a copy of which is annexed to the moving affidavit in the present action as Exhibit B.

17. In its petitions in the prior proceedings plaintiff expressly alleged that the foregoing action of the Authority was taken "—as a result of—" the advice given in said letter of the District Attorney (Exhibit A hereto). A similar assertion is made in paragraphs "16" and "17" of the complaint in this action. And the fact is that the action of the Authority did arise out of and result from such advice in the District Attorney's letter. This point is of importance in the consideration of the nature of the remedy which defendant contends, as hereinafter set forth, is exclusive in these circumstances, and whether, therefore, the present action and motion are tenable.

18. In its petitions in the prior proceedings plaintiff further alleged cooperation by its officers and directors other than George Campbell, Jr. with the District Attorney and the Grand Jury and the limited amount and degree of control and financial interest in plaintiff corporation by said George Campbell, Jr., and asserted that by reason

thereof "—it will not be in the public interest to countenance the disqualification—" (Petition of October 2, 1965, par. "37"). Similar allegations of cooperation are made in the present moving affidavit of George Morvan (par. "15") and the complaint herein (par. "19").

19. It will be noted that allegations of this nature are required in a petition instituting the special proceeding provided for in Section 2603 of the Public Authorities Law set forth in full at par. "12" of this affidavit, above (and its counterpart Section 103-c of the General Municipal Law) for relief from disqualification of a corporation for failure of an officer to waive immunity—which is precisely what is sought in the present action and motion. For emphasis, that portion of Section 2603 setting forth these requirements is now repeated, as follows;

> "—Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury at the time of refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification—".

20. Defendant respectfully contends that the relief sought by plaintiff in this action and by this motion is expressly provided for in these very circumstances by the procedure set forth in this Section 2603, that it is the exclusive remedy available in such circumstances, that it would afford, if justified, an adequate remedy, and that therefore, on this ground alone, this equitable action cannot be maintained and this motion must be denied. This will be further

treated in a memorandum of law to be submitted on the argument of these motions.

21. Indeed, it will be noted that, as stated in par. "3" of this affidavit, above, the first litigation instituted by plaintiff for the relief now sought by this action did set forth a proceeding under Section 103-c of the General Municipal Law (it was agreed that by inadvertence this was so designated in lieu of its counterpart, Section 2603 of the Public Authorities Law, and that the latter was intended); thereby, and by the allegations of "cooperation" and "public interest" above mentioned, recognizing its applicability to these circumstances. As will further be noted, Section 2603 provides that the only proper parties to that proceeding are the Attorney General and the District Attorney who brought about the disqualification by the public agency concerned. There is no provision for making the public agency itself a party thereto. Why, then, plaintiff voluntarily discontinued that proper proceeding, and thereafter pursued, and continues to pursue the Authority in improper and untenable litigations such as this one, is best known only to it.

22. The refusal of George Campbell, Jr. to waive immunity in the investigation before the Grand Jury, as advised to the Authority by the District Attorney (Exhibit A hereto) is expressly alleged in plaintiff's moving affidavit (par. "14") and complaint (par. "14"). It is also undisputed that he was the president of plaintiff and director and stockholder thereof at the time that plaintiff bid for and executed the three contracts in question, and continued as such at least until March 26, 1965, several weeks before his appearance before the Grand Jury. It is claimed, however, that on March 26, 1965 George Campbell, Jr. resigned as an officer and director of plaintiff, but not until after he and

the other officers and directors were aware of the pending investigation and that therein "—they could expect to be subpoenaed and requested to waive statutory immunity". (Morvan affidavit, par. "10"). The alleged resignation was advised by counsel (Morvan affidavit, par. "11"), and was upon request; and simultaneously "He also disposed of his stock in plaintiff." (Morvan affidavit, par. "12"). The moving affidavit clearly indicates that at the same time, to wit, March 26, 1965, that such advice was given and George Campbell, Jr. was requested to and did resign, "—all of the other officers and members of the Board of Directors of plaintiff—" were present together (see Morvan affidavit, pars. "10" and "11"). Yet singularly, it was not until April 9, 1965, not more than four or five days before George Campbell's refusal to waive immunity, that the Board of Directors of plaintiff met in special meeting, "—and accepted the resignation of George Campbell, Jr." (Morvan affidavit, par. "13").

23. Such purported resignation and surrender of his stock in the plaintiff corporation by George Campbell, Jr. prior to and in anticipation of his being called before the Grand Jury and refusal to waive immunity, is the entire basis for this action and motion. With respect to this, defendants respectfully submit:

(a) That upon the documentary evidence herewith submitted or referred to—principally, this plaintiff's own various petitions, exhibits, affidavits and testimony—as well as other circumstances hereinafter set forth, it is clear that plaintiff has been less than candid with the District Attorney, with this Authority and other public agencies concerned, and, indeed, with this Court, with respect to the circumstances of such purported "resignation" and surrender of stock.

(b) That even if plaintiff's interpretation of the contract and statutory provisions in question were correct—that is, that George Campbell, Jr.'s resignation at any time before his refusal to waive immunity was sufficient to preclude the express sanction of disqualification provided for therein, and thereby to frustrate their plain purpose and intent—such lack of candor, and the other circumstances attending these purported actions, quite clearly indicate that they were not actually effective, or taken in good faith, or both; that plaintiff has not thereby come into this Court with clean hands; and that accordingly this action, in which it seeks equitable relief, should be dismissed and its motion denied on that ground alone.

(c) In any case plaintiff's version of the contract and statutory provisions, upon which it places such complete reliance, is clearly in error. As will be demonstrated in the Memorandum of Law to be submitted herewith, so long as George Campbell, Jr. was an officer and director of plaintiff at the time the bids were submitted and the contracts in question were entered into, the Authority was not only justified, under their express provisions and those of the statute, in cancelling the contracts and disqualifying plaintiff, but it was duty bound to do so immediately upon receiving the advice from the District Attorney that Campbell had refused to waive immunity. And it matters not whether he "resigned" four minutes, or four days, or four weeks before he came before the Grand Jury. As pointed out above, had plaintiff pursued the proper procedure provided by Section 2603 of the Public Authorities Law and therein convinced the Court of the good faith and legitimacy of

such "resignation", and that it should not be held accountable for the actions of its erstwhile principal officer, it might well have obtained appropriate relief. But apparently it is unwilling to subject itself to the probing, in such a proceeding, of the District Attorney (who, with the Attorney General, is the only proper party thereto) on these subjects.

(d) In connection with plaintiff's contention that the contract and statute are to be interpreted so as to preclude the sanctions of cancellation and disqualification where the officer concerned resigned at any time before his refusal to waive immunity, it may interest the Court to know that at least thirteen other major painting contractors of the Authority involved in the same investigation, and who had done millions of dollars of business with the Authority, have similarly had their contracts cancelled and been disqualified under these contract and statutory provisions. Upon information and belief, other public agencies, including the City of New York, have disqualified both these and other contractors. But not one of them has had the temerity so fortuitously to provide for such a "resignation", or to claim that these contractual and statutory provisions could so conveniently be frustrated and nullified thereby.

24. Assuming that plaintiff's interpretation of the contract and statute are nevertheless correct, deponent now proposes to set forth the unassailable evidence above referred to, and which will demonstrate what has been above contended, to wit, that plaintiff's lack of candor herein with respect to the purported resignation and surrender of stock by George Campbell, Jr., and other circumstances attending them, are such that these alleged actions are not worthy of credence, or at least evidence such bad faith and "unclean

hands" that they cannot be made the basis for the equitable relief demanded in this action and by this motion.

25. Plaintiff's moving affidavit (by George Morvan) refers to and annexed as Exhibit A (see par. "13") the purported Minutes of a Special Meeting of plaintiff's Board of Directors held April 9, 1965, five days before George Campbell's appearance before the Grand Jury. As noted above (par. "22" of this affidavit), this was several weeks after the purported resignation of George Campbell, Jr. on March 26, 1965, at which time and place all the directors were apparently present together and immediately available for such a Special Meeting. Although one of the attorneys of record herein was a director of the corporation and present at such Meeting, and is the corporate attorney, these Minutes indicate such desperate haste in their preparation (undoubtedly it was anticipated that at any moment George Campbell would be called before the Grand Jury) that not only are there obvious and elementary omissions in the actions reported therein, but they are clearly inconsistent, in some respects, with statements made by plaintiff's representatives both in the present moving affidavit and elsewhere. Thus:

(a) The Minutes neither contain nor refer to any Waiver of Notice of such Special Meeting.

(b) The Morvan affidavit states (par. "13") that at this Special Meeting "—the Board of Directors met and accepted the resignation of George Campbell, Jr." It will be noted that the Minutes say nothing of such acceptance.

(c) No new president or director was elected to replace the one resigning. The Minutes do state that a committee was appointed to select a new president, and to report in thirty days. However, while George

Morvan presently designates himself in the moving affidavit as the president, and the complaint (par. "9") implies that he became such almost immediately upon the resignation of George Campbell, Jr. on March 26, 1965, it is a fact that as late as October 2, 1965, the corporation was still without a president and George Morvan was still only Executive Vice-President. This appears in par. "21" of the petition of that date, verified by Marian C. Rizzi, as Secretary, instituting the Article 78 Proceeding above referred to.

(d) Such petition of October 2, 1965 (par. "10") alleges that on or about March 26, 1965, together with his resignation George Campbell, Jr. "—divested himself of his stockholdings". The present moving affidavit of George Morvan (par. "12") also recites that at the time of his resignation George Campbell, Jr. "—also disposed of his stock in plaintiff". The complaint herein (par. "9") is to the same effect. But the Minutes of the Special Meeting of April 9, 1965 state that it was at that time and place that George Campbell, Jr. "—surrendered Stock Certificate No. 6 in the amount of 10 shares transferred to George Campbell Painting Corp. to the Directors of George Campbell Painting Corp. at the meeting".

(e) This stock was undoubtedly of great value if the allegations of the vast nature and volume of plaintiff's business are to be credited. It will be noted that its Notice of Claim herein (Exhibit A annexed to the complaint) asserts one million dollars as damages against the Authority alone. Yet there is not a word in these Minutes as to the consideration or arrangements for the payment for such stock. Section 513 of the Business Corporation Law pro-

hibits a corporation from purchasing its own shares, except out of surplus. Yet there is no statement in these Minutes of the existence of such a surplus, or any reference thereto, or of any financial statement before the Meeting showing whether or not such a surplus existed.

26. After receiving the Notice of Claim of July 2, 1965 (Exhibit A annexed to the complaint, par. "20"), the Authority served upon plaintiff and its attorneys a Notice requiring it to submit to examination thereon pursuant to Section 157, subdivision 3 of the Public Housing Law. A copy thereof is hereto annexed as Exhibit B-1. It will be noted that it requires the submission to such examination of any officer, director *or employee* having knowledge of or being acquainted with each item of the claim, including, specifically, George Campbell, Jr. The complaint herein expressly alleges (par. "10") that since his purported resignation as officer and director on March 26, 1965 George Campbell, Jr. "—has been employed as an estimator by plaintiff—". Certainly he was the one best in a position to testify as to the circumstances, good faith, validity and effectiveness of his purported resignation and divestiture of his stock, which constituted the very foundation of the claim. Yet not only did George Campbell, Jr. not appear for such examination but neither did any officer of the corporation active in its affairs and having full knowledge thereof—not even Marian Rizzi, its secretary, and who verified the Notice of Claim. The only person who did appear was Theodore M. Ruzow, who, it will be noted, is one of the attorneys of record for the plaintiff herein, and who submitted to examination as a director of the corporation. At the examination there also appeared Harry Lipner, Esq., his law partner as attorney for the plaintiff, and Albert A.

Blinder, Esq., who stated that he was representing the absent George Campbell, Jr. as an individual.

27. The record of this examination, held at the Authority's offices on August 5, 1965, is quite revealing with respect to the matters hereinabove discussed. It will be furnished to the Court on the argument of these motions, and is hereby referred to as part of the documentary evidence upon which the cross-motion is based. Apart from the evasions, bickering with Authority counsel, refusals to answer, and denials of knowledge of material facts with which the examination is replete, some of the testimony which was given is herewith set forth, for the convenience of the Court, to demonstrate the inconsistencies and unbelievable assertions attending the purported resignation of and surrender of his stock to George Campbell, Jr. Page numbers below set forth are those of the stenographic record of the examination.

At pages 45 through 47 the following questions were put to and answered by Mr. Ruzow:

> Q. What consideration was paid George W. Campbell, Jr. on March 26, 1965, for the transfer of George Campbell Painting Corporation ten shares of stock? A. To my knowledge, no consideration was paid to him at that time.
>
> Q. As a director of the corporation, are you familiar with the nature of this transfer? A. Yes.
>
> Q. Will you state the circumstances under which he surrendered the ten shares of stock denominated as No. 6 in the stock certificate book? A. He decided to endorse the certificate to the corporation at the same time as he resigned as an officer and a director. These things were done.
>
> Q. Did you ask him why? A. I didn't specifically ask him why, no.

Q. Were you surprised? A. I don't want to characterize my emotions. I don't recall them.

Q. No, but, as a director of the corporation, when the President comes over to you and says "I resign as an officer; I resign as President; here are my ten shares of stock"; now, isn't it only normal to ask "What's the idea? What for? What's the reason"? A. I don't recall making such inquiry of him.

Q. Did you make any inquiry of him? A. I don't recall any specific conversation where we developed the reasons at that time for his conduct. I recall subsequent conversations where we discussed it at a greater length.

At pages 48 through 50 the following appears:

Q. As a director, you don't know that Mr. George W. Campbell, Jr. appeared with Mr. Lipner, your associate, at the office of District Attorney Phillips prior to March 26, 1965? A. In spite of the apparent facetiousness of your questions, I don't recall that I was informed, in my capacity as a director. Of course, I was made aware by my partner, Mr. Lipner, that he did visit the District Attorney's office with Mr. Campbell, yes.

Q. When March 26, 1965 came around and Mr. Campbell, Jr. handed in his resignation as an officer and director and he asked to sign the certificate of shares of stock, No. 6, for transfer, you then knew that he, before that, was at the District Attorney's office, is that correct? A. I would say generally that I did, yes. There is a striking similarity between your questions and the District Attorney's questions. I don't know now whether I am being questioned by the District Attorney's office

or the New York City Housing Authority, but I'm prepared to answer all valid questions, nevertheless.

Q. Is it a valid question to ask you to tell the circumstances under which George W. Campbell, Jr. resigned on March 26th and at the same time transferred his interest of ten shares of No. 6 certificate to the Campbell Painting Corporation? A. Yes, it is, and if you would ask me that question I would be happy to answer it.

Q. I am asking you that question. State all the facts and circumstances. A. The answer is that Mr. Campbell expressed his conclusion to me that he wanted to resign as an officer and director and surrender his stock and he prepared a resignation, it was given to me, the stock certificate was endorsed and that was also given to me, and it was properly recorded in the corporate books, and that's it.

Q. You said he prepared the resignation. He cannot type, can he? A. I think he can.

At pages 51 to 52:

Q. Can you tell me who drew the resignation? A. I cannot for sure.

Q. Is your name listed as a witness to that signature? A. My name and Mr. Lipner's appear as witnesses. I know that this was signed at my office, which was then 501 Fifth Avenue. I just can't tell you—I don't see the pertinency of it but you are a better judge of that, but I just don't know who actually prepared the document or typed it.

Q. When was that resignation put into the minute book, what date? A. Shortly thereafter. It was attached to the minutes of a special meeting

of the Board of Directors of the corporation, which took place on the 9th day of April at 10:30 A.M. at my office.

At page 55:

Q. When did George Campbell Painting Corporation stop paying George Campbell, Jr., for his services to the corporation, if they did stop? A. In what capacity, sir?

In any capacity? As president? A. As president, upon his resignation.

Q. And upon the transfer of the stock, was he paid in cash for the transfer of the stock? A. I have not testified that any payment has been made to him for the stock.

Q. Is there an agreement as to any payment to be made to him? A. Orally or written?

Q. Is there an agreement? A. To the present time, no formal agreement has been entered into.

Q. What informal agreement has been made and between whom has it been made and when? A. I have not said there was a formal agreement. I merely said there wasn't a formal agreement.

Q. All right. Was there an informal agreement? A. No informal agreement has been concluded.

Q. What was stated with reference to payment for the stock? A. The matter has just been generally discussed.

Q. Between whom? A. Among the directors.

Q. Name them, please. A. The directors of the corporation.

Q. And what was determined? A. No conclusion was reached.

Q. Was any price suggested by Mr. George W. Campbell, Jr.? A. No.

Q. Was any price offered by the directors? A. No.

Q. He was to receive no compensation for the stock? A. No definite conclusion was reached.

Q. Any particular reason why? A. I cannot express an opinion.

Q. As a director? A. I cannot express an opinion.

Q. As a director, you mean you cannot express an opinion? A. As a director, I cannot express an opinion.

Q. Who employed George W. Campbell, Jr., as an employee of George Campbell Painting Corporation? A. The officers of the corporation.

Q. Which officers employed him? A. I don't know the specific officer who employed him, but it would be one of the officers.

At page 60:

Q. Will you please state the circumstances under which George W. Campbell, Jr. was employed by George Campbell Painting Corporation, indicating the place, the time and the conversations or agreements? A. I have no direct knowledge and I expressed the opinion, inasmuch as you have asked me for an opinion, that no such formalities as you have indicated took place. This is still a fairly small business and not the New York City Housing Authority.

At page 61:

Q. Now, can you tell me the circumstances under which he was employed, when, how, who and the amount of compensation he is receiving for that employment? A. I cannot tell you more than this: That he was employed after his resignation as an officer and director. I don't know his exact salary. I be-

lieve it to be substantially less than the salary he earned as president of the corporation. I don't know if any specific interview took place for the purpose of hiring.

At page 62 through 64:

Q. Some officer employed him, and I think the officer who employed him knows more about him than you do; right? A. I have testified that he has been employed by an officer of the corporation, that he is employed, that he receives a salary. Now, what else do you want to ask me?

Q. I will ask you, will you produce the officer who employed him? A. I will not. You have asked for testimony. You have gotten the testimony you have asked for.

Q. I am not getting the testimony I asked for because I asked for officers and I did not get the answer as to who employed him. A. Mr. Stein—

Q. You are a director of the corporation? A. I am a director and, as director, I told you that he has been properly and politely employed.

Q. What do you base your conclusion upon? A. Conversations.

Q. With whom? A. With the officers of the corporation.

Q. Name them. A. We went through this about 25 minutes ago.

Q. You may not have spoken to all of them at the same time. A. I have not spoken to them at one time but we are satisfied to continue Mr. Campbell's employment.

Q. Will you state the time these conversations took place? A. No. I don't recall the specific time. We did not call a meeting to discuss it.

Q. When was the last time you spoke with George Campbell, Jr.? A. A week ago.

Q. Did you ask him anything about his employment? A. No. There was no need to.

At page 40, the Certificate of Stock for ten shares in plaintiff corporation allegedly "surrendered" or "disposed of" by George Campbell, Jr. was marked in evidence, and the following colloquy with respect thereto appears:

Q. I have before me a certificate of George Campbell Painting Corporation, No. 6, which has typed in above the face of the certificate the following: "The sale or other disposition of these shares are restricted pursuant to terms of a stockholders' agreement dated the ninth day of January 1964, a copy of which is on file with the office of the corporation."

I now ask you, was George W. Campbell, Jr., a party to this agreement? A. Yes.

Q. May I see that agreement, please? A. I refuse to show you the agreement.

29. A mere comparison of the foregoing testimony with the allegations in plaintiff's present moving affidavit and complaint will, it is respectfully submitted, show their glaring inconsistencies, and the lack of genuineness, good faith and even validity of the alleged resignation of and disposition or surrender of his stock by George Campbell, Jr. As to the latter, most striking is not only the lack of any provision to this date for payment for this very valuable stock, but the fact that its "sale or other disposition" was expressly prohibited by a stockholders' agreement referred to by endorsement on its face, and which plaintiff's attorney and director refused to produce. Further, while various of the inconsistencies, contradictions, evasions and incredible assertions pointed to above may individually seem small matters, taken as a whole and together they

should, it is respectfully submitted, persuade this Court that in seeking equitable relief in this matter of such major public importance, plaintiff does not come before it with candor, frankness and complete honesty—in a word, with "clean hands".

30. In addition to what has been stated above, there is a further substantially conclusive reason why plaintiff's motion must be denied and its complaint dismissed. Both George Campbell, Jr. and plaintiff itself have been indicted upon three counts of perjury in the first degree in that, in submitting the bids to the Authority for the very contracts here in issue, they falsely swore therein that such bids were genuine and not collusive or sham. A copy of such indictment is annexed hereto as Exhibit C. A motion to dismiss such indictment and for a bill of particulars thereof was denied by Hon. Justice Brust of this Court (N. Y. L. J., Oct. 6, 1965, Special and Trial Term, Part XXIX). The indictment is now pending. As will be amply demonstrated in the Memorandum of Law to be submitted herewith, it has been settled that under these circumstances this public agency would be fully justified in rejecting such a bidder as not qualified or responsible, and will not be enjoined from doing so.

31. Plaintiff's complaint states in conclusory terms that "—as a direct result of defendant's action—" it will lose countless opportunities to bid upon contracts with public agencies throughout the United States (Complaint, par. "24"). But the only specific fact it sets forth in this respect is a letter of rejection from the New Jersey State Highway Department, which states, as the reason therefore "—that your firm was banned by executive order of the Mayor of New York until April 27, 1970." (Complaint, par. "23"). A copy of such Executive Order is annexed

hereto as Exhibit D. Since the Authority is an independent autonomous public corporation, it is obvious that in any case, at least in this instance such rejection was not predicated upon any action taken by it, but by the City of New York; and that the complaint in this respect is without substance on its face.

32. There is one final obstacle to the relief demanded in plaintiff's motion and complaint in this action. It has been pointed out in par. "4" above that plaintiff instituted an Article 78 proceeding in this Court for the very relief now sought in this action, that it has served a Notice of Appeal from the judgment dismissing that action, and that that appeal is now pending undetermined. Accordingly, as provided by 3211 subdivision 4 CPLR, on this ground alone this action should be dismissed, unless the Court pursuant thereto makes such other order in the circumstances as justice may require.

33. In summary, deponent respectfully submits that it has been amply demonstrated by all of the foregoing that plaintiff's motion should be denied and defendant's cross motion to dismiss the complaint granted, for the following reasons:

(a) Under the express provisions of the contracts and Sections 2601 and 2602 of the Public Authorities Law plaintiff was properly disqualified whether or not George Campbell, Jr. resigned as president and director of plaintiff, and disposed of his stock therein, prior to his refusal to waive immunity. Plaintiff's interpretation of these provisions to the contrary is in error.

(b) Plaintiff has an adequate and exclusive remedy, for the relief sought in this action, in the proceeding provided for in Section 2603 of the Public

Authorities Law. It will be noted that that section provides for such a proceeding whether the disqualification is made under the mandatory provisions in these contracts required by Section 2601, or pursuant to the purely statutory provisions of Section 2602.

(d) Even if plaintiff's interpretation were correct, the documentary evidence shows on its face that such purported resignation and disposal of stock were not genuine, in good faith and valid, and that in making these assertions plaintiff does not come into this Court of Equity with "clean hands".

(e) Plaintiff and George Campbell, Jr. being presently under criminal indictment in connection with these very contracts, the Authority will be fully justified in continuing to refuse to accept further bids from them, and will not be compelled to do so by the relief sought in this action and motion.

WHEREFORE, deponent respectfully prays that plaintiff's motion herein be denied and its complaint dismissed, with costs.

PAUL W. HESSEL

(Sworn to January 31, 1966.)

Exhibit A Annexed to Hessel Affidavit

Letter

DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
155 Leonard Street
New York 13, N. Y.

April 16, 1965

Honorable William Reid
Chairman of the New York City
Housing Authority
250 Broadway
New York, New York

Re: *People* v. *John Doe et al.*

Dear Mr. Reid:

Following my letters of April 8th and April 14th, 1965, and in conformance with Section 103-b of the General Municipal Laws, this office advises you that Mr. George Campbell, Jr. of the George Campbell & Co. and George Campbell Corp., located at 40-11 49th Street, Flushing, New York, and Mr. Vincent B. Turecamo of the Ryan-Turecamo, Inc. of 275 Madison Avenue, New York City, refused to sign waivers of immunity before the New York County Grand Jury referred to in my letters of April 8th and 14th.

We would appreciate being advised as to what action your agency takes in this matter.

Sincerely,

Frank S. Hogan
District Attorney

MHM/cn

Exhibit B Annexed to Hessel Affidavit

Letter

[LETTERHEAD OF]
NEW YORK CITY HOUSING AUTHORITY
250 Broadway : New York, N. Y. 10007

April 21, 1965

George Campbell Painting Corp.
40-11 149th Street
Flushing 52, New York

Re: Contracts Nos.
PD 65-5A (McKinley, Morris & Morrisania)
PD 65-10C (First & Riis (F & C)
PD 65-14B (Lehman & Taft)

Gentlemen:

The Authority has been officially informed by the District Attorney of New York County that George Campbell, Jr., an officer of your company, has refused to waive immunity when subpoenaed to testify before the Grand Jury of that county in connection with a pending investigation to determine whether the crimes of bid rigging on public contracts, bribery of a public officer, bribery of a labor official, extortion, coercion, assault, and conspiracy to commit each of these crimes, has occurred in New York County.

Please take notice that by reason of the foregoing, and pursuant to the provisions of Section 38 of the General Conditions of the above contracts, the Authority has directed, and you are hereby advised, that such Contracts be and they hereby are cancelled and terminated, effective

immediately. You are directed to remove immediately from each of the projects covered by the above Contracts all your materials and equipment.

Please take further notice that in accordance with the further provisions of said Section 38 the Authority has directed, and you are hereby advised, that said George Campbell, Jr., and any firm, partnership or corporation of which he is a member, partner, director or officer, including your company, has been and will be disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with the Authority for goods, work or services, for a period of five (5) years after such refusal.

Yours very truly,

Gerald J. Carey
General Manager

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Exhibit B-1 Annexed to Hessel Affidavit

Notice of Examination

In the Matter of the Claim of George Campbell Painting Corp. dated July 2, 1965 relating to Contracts Nos. PD 65-5A (McKinley, Morrisania and Morris Houses), PD 65-10C (First and Riis Houses), and PD 65-14B (Lehman and Taft Houses),

against

New York City Housing Authority.

SIRS:

PLEASE TAKE NOTICE that the New York City Housing Authority, pursuant to the provisions of Section 157, subdivision 3, of the Public Housing Law, requires George Campbell Corp., the claimant named in the above entitled caption, by its president, and any officer, director, or employee having knowledge of or being acquainted with each item of said claim, including specifically, but not limited to, George Campbell, Jr., to appear at the principal office of the New York City Housing Authority, 250 Broadway, New York City, Room 624, on August 5, 1965, at 11:00 A.M. of that day, to testify under oath with respect to each and every item specified in its notice of claim dated July 2, 1965 and to answer orally as to any facts relative to the adjustment or disposition of such claim.

PLEASE TAKE FURTHER NOTICE that the New York City Housing Authority requires that George Campbell Painting Corp., at the time and place of said hearing, make

available to the Authority for its examination, on matters relating to each item of said claim the following:

1. Certificate of Incorporation, with amendments, if any, of George Campbell Painting Corp., the minute book, stock book, transfer book of George Campbell Painting Corp.

2. All documents, records and correspondence bearing upon and relating to the connection between Mr. George Campbell and George Campbell Painting Corp. in his capacity as President, officer, employee and stockholder.

3. Last Will and Testament of George Campbell, Sr. filed in Surrogate's Court, Queens County, and copies of all papers and proceedings connected thereto.

4. All records, documents, contracts, books and writings bearing upon and relating to the sum of $1,000,000 which sum is claimed as damages by George Campbell Painting Corp. in its notice of claim served upon the Authority.

Dated: New York, N. Y., July 20, 1965

Yours, etc.

HARRY LEVY, Counsel,
New York City Housing Authority,
250 Broadway
New York, N. Y. 10007
433-5175

To:

RUZOW & LIPNER, Esqs.
201 E. 42nd Street
New York City

Attorneys for Claimant

Exhibit C Annexed to Hessel Affidavit

Indictment

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE W. CAMPBELL, JR.

and

GEORGE CAMPBELL PAINTING CORP.,

Defendants.

The Grand Jury of the County of New York, by this indictment, accuse the above-named defendants of Perjury in the First Degree, committed as follows:

The defendants, in the County of New York on or about October 15, 1964, did commit perjury with respect to a material matter on an occasion in which an affirmation was required by law in that said defendants did unlawfully, knowingly, wilfully and falsely affirm as true the following non-collusive bidding statement:

> "That this bid is genuine and not collusive or sham. That said bidder has not colluded, conspired or connived * * * to fix the bid price * * *"

Exhibit C Annexed to Hessel Affidavit

Said false non-collusive bidding statement was submitted to the New York City Housing Authority in connection with an official bid tendered to said authority for the purpose of securing a contract to furnish the said authority with materials and services.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime of Perjury in the First Degree, committed as follows:

The defendants, in the County of New York on or about October 20, 1964, did commit perjury with respect to a material matter on an occasion on which an affirmation was required by law in that said defendant did unlawfully, knowingly, wilfully and falsely affirm as true the following non-collusive bidding statement:

> "That this bid is genuine and not collusive or sham. That said bidder has not colluded, conspired or connived * * * to fix the bid price * * *"

Said false non-collusive bidding statement was submitted to the New York City Housing Authority in connection with an official bid tendered to said authority for the purpose of securing a contract to furnish the said authority with materials and services.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime of Perjury in the First Degree, committed as follows:

The defendants, in the County of New York on or about November 30, 1964, did commit perjury with respect to a

material matter on an occasion on which an affirmation was required by law in that said defendants did unlawfully, knowingly, wilfully and falsely affirm as true the following non-collusive bidding statement:

> "That this bid is genuine and not collusive or sham. That said bidder has not colluded, conspired or connived * * * to fix the bid price * * *"

Said false non-collusive bidding statement was submitted to the New York City Housing Authority in connection with an official bid tendered to said authority for the purpose of securing a contract to furnish the said authority with materials and services.

Frank S. Hogan
District Attorney

Exhibit C Annexed to Hessel Affidavit

No. 1D

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE W. CAMPBELL, JR.

and

GEORGE CAMPBELL PAINTING CORP., (NA)
Defendants.

INDICTMENT

PERJURY IN THE FIRST DEGREE

Penal Law Sect. 1620-a

FRANK S. HOGAN

District Attorney

A TRUE BILL

Foreman

Exhibit D Annexed to Hessel Affidavit

Executive Order

April 8, 1965

EXECUTIVE ORDER No. 138

TO: HEADS OF ALL DEPARTMENTS AND AGENCIES

FROM: ROBERT F. WAGNER, MAYOR

SUBJECT: DISQUALIFICATION OF CONTRACTING FIRMS

Section 103-b of the General Municipal Law provides that upon the refusal of any person, when called before a grand jury (a) to testify concerning any transaction or contract had with the State, City or any of their agencies, (b) to sign a waiver of immunity against subsequent criminal prosecution or (c) to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from submitting bids or entering into any contracts with any municipal corporation for a period of five years after such refusal. The officer conducting the investigation before the grand jury is required to advise the various governmental agencies involved.

Whenever a City Department or City Agency has been officially informed by a District Attorney of the names of any firm, partnership or corporation, of which a member, partner, officer or director who has so refused, the Department or Agency shall take the following action:

1. Each contract with such firm, partnership or corporation shall be cancelled or terminated, subject only to payment of any monies owing for goods delivered or work done prior to such cancellation or termination.

Exhibit D Annexed to Hessel Affidavit

2. Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer, shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the Department or Agency for goods, work or services for a period of five years after such refusal.

This order shall take effect immediately.

ROBERT F. WAGNER
Mayor

Exhibit D Annexed to Hessel Affidavit

[LETTERHEAD OF]

CITY OF NEW YORK
OFFICE OF THE MAYOR
New York 7, N. Y.

April 8, 1965

EXECUTIVE ORDER No. 138 ADDENDUM No. 1

TO: HEADS OF ALL DEPARTMENTS AND AGENCIES

FROM: ROBERT F. WAGNER, MAYOR

SUBJECT: DISQUALIFICATION OF CERTAIN CONTRACTING FIRMS

Official notification has been received from the District Attorney of New York County that the following persons have refused to sign waivers of immunity when subpoenaed to testify before the Grand Jury of New York County.

1. Max Gerben, of Gerben Contracting Corp., 2031 129th Street, College Point, New York.

2. Jerry Jerome, of Jered Contracting Corp., 1 East 42nd Street, New York 17, N. Y.

3. John Loconsolo, of Jack Loconsolo & Co., Inc., 2660 Coney Island Avenue, Brooklyn 23, N. Y.

4. Sam Spector, of Dunrite Painting & Decorating Co., 1475 Seabury Place, New York 60, N. Y.

5. Arnold Marcus of Marcus Decorating Co., 30 Church Street, New York 7, N. Y.

6. Melvin M. Bloom and Howard Bloom of Surf Painting Co., Inc., 3838 Flatlands Avenue, Brooklyn 34, N. Y.

Exhibit D Annexed to Hessel Affidavit

7. Samuel Garfinkel of Garfinkel Decorating Company, Inc., 90-50 Parsons Boulevard, Jamaica 32, N. Y.

8. Abraham Kaplan of Abraham Kaplan Co., Inc., 1847 Utica Avenue, Brooklyn, N. Y.

9. Benjamin Fishbein of Benay Painting Co., also known as the East River Painting Co., 157A Sherman Avenue, New York 34, N. Y.

In accordance with the policy set forth in Executive Order No. 138 all City Departments and Agencies are directed to take the necessary appropriate action immediately.

ROBERT F. WAGNER
Mayor

Exhibit D Annexed to Hessel Affidavit

[LETTERHEAD OF]

CITY OF NEW YORK
OFFICE OF THE MAYOR
New York 7, N. Y.

April 27, 1965

EXECUTIVE ORDER No. 138 ADDENDUM No. 2

TO: HEADS OF ALL DEPARTMENTS AND AGENCIES

FROM: ROBERT F. WAGNER, MAYOR

SUBJECT: DISQUALIFICATION OF CERTAIN CONTRACTING FIRMS

Official notification has been received from the District Attorney of New York County that the following persons have refused to sign waivers of immunity when subpoenaed to testify before the Grand Jury of New York County:

1. Vincent B. Turecamo, of Ryan and Turecamo, Inc., 275 Madison Avenue, New York, N. Y.
2. George Campbell, of George Campbell Painting Corp., 40-11 149th Street, Flushing, New York
3. Norman Straus, of Hubbard Painting Decorating, 172 Neptune Avenue, Brooklyn 35, New York
4. Meyer Peskim, of Pelham Painting Co., Inc., 524 Southern Boulevard, Bronx 55, New York

In accordance with the policy set forth in Executive Order No. 138 all City Departments and Agencies are directed to take the necessary appropriate action immediately.

ROBERT F. WAGNER
Mayor

Reply and Answering Affidavit of George Morvan in Support of Motion and in Opposition to Cross Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

State of New York)
County of New York) ss.:

GEORGE MORVAN, being duly sworn, says:

1. I am the President of plaintiff and submit this affidavit to reply to certain statements contained in defendants' answering and cross-moving affidavit.

2. Defendants' cross-moving papers conceded that the relevant facts are not disputed and that the only relevant issue is one of interpreting the contracts between the parties. However, they move to dismiss on the ground of unclean hands, and purport to support this solely by speculation, innuendo and supposition concerning matters as to which defendants have actual knowledge contrary to their speculations.

3. If defendants were not aware of the true facts their position would not be as reprehensible and offensive.

4. Defendants know and have often done business with plaintiff. They know that young George Campbell, Jr. was only 23 years old in August, 1964 when his father, plaintiff's founder, died. They know that when he was appointed President, he had less than a year's experience in

the business and never actually assumed all of the duties and responsibilities of chief executive officer.

5. Defendants know that your deponent and a dozen or so other experienced executive employees, were all helping to train young Mr. Campbell, with a view toward his one day assuming full command.

6. Defendants know that hardly half a year had gone by when the youth had to resign and did resign under the circumstances set forth in the moving papers.

7. Defendants may not have known that your deponent was named President on December 1, 1965, but they certainly knew that your deponent was executive vice President.

8. Defendants know that the rest of the Campbell family have an independent and conflicting interest with young George, Jr., and that they owned more stock than he did.

9. I am not a "front" for George Campbell, Jr. (now 25 years old). Plaintiff is not a "front" for George Campbell, Jr. Obviously, the Campbell family regrets his inability to succeed his father, but his decision to refuse to sign a waiver of immunity left them no alternative—he had to step down and out.

10. Defendants imply a sinister motive to the fact that no agreement has been reached as to the amount of consideration to be paid for the ten percent stock interest surrendered by George Campbell, Jr. In the first place, non-controlling stock ownership by a disqualified person is not one of the criteria in the statute that defendants

could have used to disqualify plaintiff. In the second place, this obvious reason for not fixing the fair value of the stock is the inability of anyone to determine its fair value until the conclusion of all the investigations.

11. If there is bad faith involved in this case, it is the submission by defendants of an affidavit that deliberately ignores the true facts in order to suggest as fact what is known to be specious.

George Morvan

(Sworn to February 14, 1966.)

Order Staying the Action

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse thereof, on the 18 day of March, 1966.

Present:

Hon. MITCHELL D. SCHWEITZER, Justice

GEORGE CAMPBELL PAINTING CORP.,

Plaintiff,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Defendants.

Plaintiff, by its attorneys, Ruzow & Lipner, having moved by Order to Show Cause dated January 7, 1966 for an order enjoining *pendente lite* defendants from barring or disqualifying plaintiff from future bidding and directing the restoration of its name to the qualified bidder list, or, alternatively, directing that the issues raised herein be set down for an immediate trial, and the defendants having cross moved by Notice of Cross Motion dated January 31 1966, for an order dismissing the complaint, and the said motion and cross motion having regularly come on to be heard,

Now, on reading and filing the Order to Show Cause dated January 7, 1966, the affidavit of George Morvan, sworn to January 6, 1966, the summons and complaint veri-

fied by said George Morvan on January 6, 1966, with exhibits annexed thereto and the affidavit of George Morvan sworn to Feb. 14, 1966, in support of the motion and in opposition to the cross motion, and upon reading and filing the Notice of Cross Motion, dated January 31, 1966, the affidavit of Paul W. Hessel, sworn to the 31st day of January, 1966, with exhibits annexed, in opposition to the motion and in support of the cross motion, and after hearing Ruzow & Lipner, Esqs., Albert A. Blinder, of counsel, in support of the motion and in opposition to the cross motion, and Harry Levy, Esq., Paul W. Hessel and I. Stanley Stein, Esqs., of counsel, in opposition to the motion and in support of the cross motion, and after due deliberation having been had herein,

Now, upon motion of Ruzow & Lipner, attorneys for plaintiff, it is

ORDERED, that the cross motion is granted insofar as and only to the extent of staying the instant action pending final determination after appeal or termination in any fashion of plaintiff's appeal from the order of this court, per Hon. George Tilzer, dated December 14, 1965, and filed in the office of the Clerk of New York County on January 10, 1966; and it is further

ORDERED, that leave is hereby granted to plaintiff and defendants to renew at an appropriate time the instant motion and cross motion.

Enter,

/s/ MITCHELL D. SCHWEITZER
J. S. C.

Filed
Mar 21 1966
New York
County Clerk's Office

Opinion of Schweitzer, J.

(N.Y.L.J. March 8, 1966)

Plaintiff-painting contractor instituted this action for a permanent injunction of the enforcement by defendant the New York City Housing Authority of the disqualification and barring of plaintiff from bidding on public contracts with the aforesaid authority for a period of five years. At this initial stage of the lawsuit, plaintiff applies for a preliminary injunction which would, during the interim trial period, afford plaintiff the same relief as the ultimate remedy sought. Defendant has crossed-moved for an order dismissing the complaint upon, amongst other bases, the ground that another action is pending between the same parties for the same cause of action (CPLR 3211 [a] 4). An article 78 proceeding had been instituted by plaintiff in the instant action for an order annulling the subject determination by the New York City Housing Authority, and examination by both pleadings lends support to the contention by defendant. The application was denied and the petition dismissed without prejudice to a plenary suit as the court was convinced that an article 78 proceeding was not appropriate. At present, an appeal is pending from this judgment of dismissal. Logic and the rationale of fairness underlying CPLR 3211(a)4 require that, under the present circumstances, we adopt the view that "* * * an action in which a judgment has been rendered is deemed to continue to exist pending an appeal * * *" (Apelbaum v. Apelbaum, 16 Misc. 2d 636, 638; see 4 Weinstein-Korn-Miller, New York Civil Practice, pars. 3211.25-3211.21). Accordingly, defendant's cross-motion is granted in so far as it has been interposed pursuant to

CPLR 3211(a)4 and only to the extent of staying the instant action pending final determination after appeal or termination, in any fashion, of the aforesaid appeal or termination, in any fashion, of the aforesaid 78 proceeding. Within the context of the foregoing disposition, the application by plaintiff and the remainder of the relief requested in the cross-motion are, consonant with the foregoing, not considered, and leave is granted to renew at any appropriate time. Settle order.

Notice of Cross-Appeal

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 247/1966

GEORGE CAMPBELL PAINTING CORP.,

Plaintiff,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Defendants.

SIRS:

PLEASE TAKE NOTICE that the above-named defendants hereby cross-appeal to the Appellate Division of the Supreme Court, First Judicial Department, from the order made in this action dated March 18, 1966, and entered in the office of the Clerk of the County of New York on the 21st day of March, 1966, and from each and every part of said

order insofar as it relates to and affects defendants' cross-motion dated January 31, 1966.

Dated: April 7, 1966

Yours, etc.

HARRY LEVY
Attorney for Defendants
250 Broadway
New York, New York 10007
433-5010

To:

CLERK OF THE COUNTY OF NEW YORK

RUZOW & LIPNER, Esqs.
Attorneys for Plaintiff
201 E. 42nd Street
New York, New York 10017
697-7780

Order of Modification of the Appellate Division

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 3rd day of November, 1966.

Present—

Hon. Charles D. Breitel, Justice Presiding
Hon. Benjamin J. Rabin,)
Hon. Harold A. Stevens,)
Hon. Louis J. Capozzoli,)
Hon. Earle C. Bastow,)
Justices

10764

GEORGE CAMPBELL PAINTING CORP.,
Plaintiff-Appellant-Respondent,

vs.

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, members of the New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY,
Defendants-Respondents-Appellants.

Cross-appeals having been taken to this Court by the plaintiff-appellant-respondent from so much of the order of the Supreme Court, New York County, entered on March 21, 1966, as grants defendants' cross-motion to the extent of staying the instant action pending final determination after appeal or termination in any fashion of plaintiff's

Order of Modification of the Appellate Division

appeal from the order and judgment (one paper) of the Supreme Court, New York County, entered on January 10, 1966, and by the defendants-respondents-appellants from so much of the aforesaid order as relates to and affects defendants' cross-motion dated January 31, 1966,

And said appeals having been argued by Mr. Albert A. Blinder of counsel for plaintiff-appellant-respondent, by Mr. Paul W. Hessel of counsel for defendants-respondents-appellants, by Mr. Robert E. Hugh of counsel for Hon. Louis J. Lefkowitz, Attorney General of the State of New York, appearing pursuant to Executive Law, §71, and a brief amicus curiae having been filed on behalf of the District Attorney, New York County; and due deliberation having been had thereon; and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the order so appealed from be and the same is hereby modified, on the law and on the facts, with $50 costs and disbursements to defendants-respondents-appellants, so as to grant defendants' cross-motion to dismiss the complaint, with $10 costs, and the Clerk is directed to enter judgment in favor of the defendants dismissing the complaint, with costs.

Enter:

Hyman W. Gamso
Clerk.

Opinion of the Appellate Division

26 A.D.2d 365, 275 N.Y.S. 2d 365

Order, entered on March 21, 1966, granting defendants' cross-motion to dismiss the complaint pursuant to CPLR 3211(a) to the extent only of staying the action for a permanent injunction, pending a final determination of the article 78 proceeding instituted by plaintiff in this action against defendants in this action, unanimously modified on the law and on the facts, with $50 costs and disbursements to defendants-respondents-appellants and complaint dismissed. The complaint is insufficient because plaintiff is subject to the contractual agreements it made and because on the present allegations plaintiff does not establish a case for equitable relief. Order filed.

Remittitur from Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

Witness,

The Hon. STANLEY H. FULD, Chief Judge, *Presiding.*
RAYMOND J. CANNON, *Clerk.*

Remittitur July 7, 1967

1. No. 116 67

George Campbell Painting Corp.,
Appellant,

vs.

William Reid, & ors., &c., & ano.,
Respondents.

BE IT REMEMBERED, That on the 12th day of March in the year of our Lord one thousand nine hundred and sixty-seven, George Campbell Painting Corp., the appellant in this cause, came here unto the Court of Appeals, by Ruzow

& Lipner, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And William Reid, & ors., &c., & ano., the respondents in said cause, afterwards appeared in said Court of Appeals by Harry Levy, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Albert A Blinder, of counsel for the appellant, and by Mr. Paul W. Hessel, of counsel for the respondents, and by Mr. Samuel A. Hirshowitz, of counsel for the Attorney General, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be

Remittitur from Court of Appeals

enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office,
Albany, July 7, 1967.

[SEAL]

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON

Clerk

Opinion of Court of Appeals, State of New York

20 N. Y. 2d 370

283 N.Y.S. 2d 31

229 N.E. 2d 602

STATE OF NEW YORK

COURT OF APPEALS

[SAME TITLE]

PER CURIAM:

This is an action to nullify a determination of the New York City Housing Authority disqualifying the appellant corporation from bidding on future contracts with the Authority. In addition the appellant seeks an injunction against the Authority's enforcement of its decision. The disqualification is mandated by the Public Authorities Law §2601 since the appellant's former president appeared before a grand jury investigation bid-rigging and refused to sign a waiver of immunity.

We hold that section 2601 of the Public Authorities Law is constitutional (*Matter of Gardner* v. *Broderick*, 20 N Y 2d 227, 282 N.Y.S. 2d 487, 229 N.E. 2d 184, decided herewith) and that the disqualification imposed on the appellant corporation is valid. The fact that the appellant's officer resigned his position and that the resignation was accepted prior to his appearance before the grand jury and his refusal to sign a waiver of immunity is not controlling. Where the termination of the relationship of the individual officer with the corporation occurs almost contemporaneously with his refusal to sign a waiver of immunity or where it is obvious that the resignation was tendered and accepted solely for the purpose

of avoiding the statutory disqualification, the person so resigning or otherwise departing shall be deemed to have acted in his capacity as a corporate officer when he refused to sign the waiver.

There may be times when the statute will operate to penalize a corporation which had severed its connection with the recalcitrant officer and which has otherwise been cooperative. The Legislature has, however, recognized this problem and has specified a procedure by which the disqualification can be removed under such circumstances. (Public Authorities Law §2603). The appellant's exclusive remedy is the procedure outlined in that statute.

The orders of the Appellate Division should be affirmed with costs.

FULD, C.J., and VAN VOORHIS, BURKE, SCILEPPI, BERGAN and KEATING, JJ., concur.

BREITEL, J., taking no part.

Orders affirmed.

Notice of Appeal to the Supreme Court of the United States

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

INDEX NO. 247/66

GEORGE CAMPBELL PAINTING CORP.,
Plaintiff-Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, Members of the New York City Housing Authority, THE NEW YORK CITY HOUSING AUTHORITY,
Defendants-Appellees.

I. Notice is hereby given that GEORGE CAMPBELL PAINTING CORP., the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals dismissing its complaint entered in this action on July 7, 1967.

This appeal is taken pursuant to 28 U. S. C. §1257(2).

II. The clerk will please prepare a transcript of the entire record in this cause, for transmission to the Clerk

of the Supreme Court of the United States, and include in said transcript the following:

1. Remittitur of the Court of Appeals dated July 7, 1967.
2. Opinion of the Court of Appeals.
3. Notice of Appeal to the Court of Appeals.
4. Order of Modification of the Appellate Division.
5. Opinion of the Appellate Division.
6. Notice of Appeal to the Appellate Division.
7. Notice of Cross Appeal to the Appellate Division.
8. Order of Special Term.
9. Opinion of Schweitzer, J.
10. Order to Show Cause.
11. Affidavit of George Morvan with Exhibits "A"—"D" annexed thereto.
12. Summons.
13. Verified Complaint with Exhibit "A" annexed thereto.
14. Reply and Answering Affidavit of George Morvan.
15. Notice of Cross Motion.
16. Affidavit of Paul W. Hessel with Exhibits "A"—"D" annexed thereto.

III. The following Questions are presented by this appeal:

1. Is the 14th Amendment offended by New York State's Public Authorities Law, §2602, which disqualifies

a corporation from eligibility to bid on public contracts if one of its officers or directors asserts his privilege against self incrimination when called before a grand jury?

a) If not, does the fact that the recalcitrant witness resigned his office and surrendered his control of the company's affairs prior to being called as a witness make a difference?

2. Is New York State's statutory requirement, Public Authorities Law §2601, that all public contracts contain an agreement to waive the privilege against self incrimination an unconstitutional condition of doing business with the state and its agencies?

RUZOW & LIPNER
Attorneys for Petitioner
Appellant
Office & Post Office Address:
122 East 42nd Street
Borough of Manhattan
City of New York

To:

CLERK, Supreme Court of the State of New York
County of New York

HARRY LEVY
Attorney for Defendants-Appellees
250 Broadway
New York, New York

LOUIS J. LEFKOWITZ
Attorney General of the State of
New York appearing pursuant to
Executive Law #71
Albany, New York 11224

Order Noting Probable Jurisdiction

No. 673 ....., October Term, 1967

GEORGE CAMPBELL PAINTING CORP.,
Appellant,

v.

WILLIAM REID, et al.

APPEAL from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 635.

January 29, 1968